

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE LOPEZ TORRES, ALVIN GAITAN
BENITEZ, CHRISTIAN LEMUS CERNA,
OMAR DEJESUS CASTILLO, MANUEL
ERNESTO PAIZ GUEVARA, and
JESUS ALEJANDRO CHAVEZ,

Defendants.

Crim. No. 1:14cr306

April 14, 2016

JURY TRIAL

BEFORE: THE HONORABLE GERALD BRUCE LEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR GOVERNMENT: UNITED STATES ATTORNEY'S OFFICE
BY: JULIA MARTINEZ, AUSA
TOBIAS TOBLER, AUSA

OFFICIAL COURT REPORTER:

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U.S. District Court
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1 APPEARANCES (Continued)

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25 JEROME P. AQUINO, ESQ.
ELITA C. AMATO, ESQ.

INDEX

<u>WITNESS (Government)</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Jose Garcia (Cont.)	---	---	5	29
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Michelle L. Miller	32	89	---	---
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Juan Carlos Ayala Marquez	124 (Not completed)			
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(Court recessed)

PROCEEDINGS

(Thereupon, the following was heard in open court at 10:13 a.m.)

THE CLERK: 1:14-306, United States versus Jose Lopez Torres, Alvin Gaitan Benitez, Christian Lemus Cerna, Omar Dejesus Castillo, Manuel Ernesto Paiz Guevara, and Jesus Alejandro Chavez.

THE COURT: Good morning, everyone. Ready to bring the jury out?

Bring the jury out, Mr. Burns. Thank you.
(Jury present.)

THE COURT: You may be seated.

Good morning, ladies and gentlemen.

THE JURORS: Good morning.

THE COURT: Good morning, Counsel.

Good morning, Mr. Omar Dejesus Castillo.

Good morning, Mr. Manuel Ernesto Paiz Guevara. Good morning.

Good morning, Mr. Jesus Alejandro Chavez.
Good morning.

Good morning, Mr. Alvin Gaitan Benitez.

Good morning, Mr. Jose Lopez Torres.

And good morning, Mr. Christian Lemus Cerna.

Good morning, Counsel. Ready to proceed?

1 Bring the witness back, please.

2 (Witness resumed stand.)

3 THE COURT: Good morning, Mr. Garcia.

4 THE WITNESS: Good morning.

5 THE COURT: Counsel, you may proceed.

6 THEREUPON, JOSE GARCIA, previously duly
7 sworn, testified further as follows:

8 REDIRECT EXAMINATION (Continued)

9 BY MS. MARTINEZ:

10 Q. Good morning, Mr. Garcia.

11 A. Good morning.

12 Q. When we left off yesterday, we were in
13 Government's Exhibit 10-A-1. Go to the cover page
14 first. Just -- and you can actually just use the
15 screen. That would be easier than the binder there.

16 Just to refresh your recollection, this is the
17 3-31-2014 recording with Pesadilla and Lil Poison,
18 right?

19 A. Yes.

20 Q. Okay. We were on page seven. When we left off
21 before the break, I had asked you to review this page
22 and told you I was going to ask you about just that last
23 paragraph by Pesadilla at the bottom.

24 My question is going to be, what event is he
25 talking about is being discussed in the call?

1 And then we will move on to the next page. Take
2 your time to review however much you need.

3 A. Okay.

4 Q. In that paragraph, Mr. Pesadilla said, "I held
5 his coconut down on the ground and I stuck him with the
6 blade with everything," what is he talking about?

7 A. He's talking about the murder of Lil Guasón.

8 Q. Please turn to page eight. And I'll ask you a
9 couple questions about this page. If you need to,
10 please review it.

11 A. Okay.

12 Q. Okay. Now, this recording with Pesadilla
13 discussing the murder of Lil Guasón, was the recording
14 before or after the murder?

15 A. After the murder.

16 Q. On this page here, there's references to
17 Solitario. Pesadilla talks about Solitario. Do you see
18 that?

19 A. Yes.

20 Q. Solitario's lawyer asked you on cross-examination
21 about what Pesadilla said about Solitario. Do you
22 recall?

23 A. Yes.

24 Q. Now, in the middle of the page, in that longish
25 paragraph by Pesadilla that starts with, "Yeah, yes,

1 yes," he says, "The homie was already wet." What homie
2 is he talking about?

3 A. He's talking about Solitario From PVLS.

4 Q. What does "wet" mean?

5 A. Wet mean that he already kill someone.

6 Q. Do you understand what murder he's talking about,
7 that Solitario committed?

8 A. Yes.

9 Q. What murder?

10 A. Lil Guasón.

11 Q. Thank you.

12 Let's go now to Government's Exhibit 8-A-1.

13 Starting with the cover page, What's the date on this
14 recording?

15 A. It's January 26, 2014.

16 Q. And, who are you speaking to?

17 A. Lil Payaso from PVLS.

18 Q. Lil Payaso's attorney asked you about this
19 recording as well. Do you remember?

20 A. Yes.

21 Q. If we could go to page eight. I'm going to ask
22 you primarily about that long paragraph in the middle.
23 Take your time to review as much as you need.

24 A. Okay.

25 Q. Lil Payaso's attorney asked you about this long

1 paragraph. Do you remember that?

2 A. Yes.

3 Q. She asked you in the last sentence about the word
4 "restaurant." Do you remember that?

5 A. Yes.

6 Q. That full sentence there, "So then we went there
7 to the restaurant where we cooked the chicken. We gave
8 it to him."

9 What do you understand Lil Payaso to be saying?

10 A. Pretty much that when Lagrima was killed, when --
11 at the park.

12 Q. What the significance of the chicken?

13 A. They were referring chicken as Lagrima.

14 Q. What does "the restaurant" mean?

15 A. It means when they kill Lagrima at the park.

16 Q. Why does it mean that?

17 A. Because that's when they say the chicken, they
18 cook the chicken, so they killed Lagrima at the park.

19 Q. Why do gang members use the words like "cook" and
20 "restaurant"?

21 A. Just as a code.

22 Q. Is that a code you're familiar with?

23 A. Yes.

24 Q. Is that a code that's been used more than just by
25 Lil Payaso in this call?

1 A. Yes.

2 Q. At the very bottom of the page, you ask,
3 "Oh, that's the time when you eat?" Do you see that?

4 A. Yes.

5 Q. What were you asking?

6 A. Pretty much if that's the time when they killed
7 Lagrima.

8 Q. Please turn to the next page. How does Lil
9 Payaso respond to your question?

10 A. Yes, that's when they kill Lagrima.

11 Q. Now, he says in that response, "That was when we
12 went to eat." Do you see that?

13 A. Yes.

14 Q. Do you recall that Lil Payaso's attorney asked
15 you about his use of the word "we"?

16 A. Yes.

17 Q. Continuing in that sentence, he says, "That's the
18 only time I saw him." What do you understand Lil Payaso
19 to be saying about himself in that sentence?

20 A. That's the only time he saw Lagrima.

21 Q. When was the only time that Lil Payaso saw
22 Lagrima?

23 A. When they killed him.

24 Q. When who killed him?

25 A. Lil Payaso, with the PVLS clique.

1 Q. Please turn now -- let me ask this first: At
2 another time, did Lil Payaso tell you what he
3 specifically did during the murder?

4 A. Yes.

5 Q. Please turn to Government's Exhibit 23-A-1. Who
6 are you talking to in this recording?

7 A. Lil Payaso and Lil Tuner from PVLS.

8 Q. What's the date of the recording?

9 A. It's July 27, 2014.

10 Q. Do you remember this recording?

11 A. Yes.

12 Q. Where was it?

13 A. It was at the park.

14 Q. Please turn to page 33. Take your time to
15 review. I'm going to ask you about what Lil Payaso says
16 on this page.

17 A. Okay.

18 Q. What is Lil Payaso talking about here?

19 A. When they kill Lagrima, what he did when he kill
20 Lagrima.

21 Q. What did Lil Payaso say that he specifically did
22 when the gang killed Lagrima?

23 A. He went after Lagrima's feet to knock him down.

24 Q. Please turn now to Government's Exhibit 15-A-1.
25 Who is this recording with?

1 A. Leopardo from PVLS, Gatito.

2 Q. Let's turn to page 21. Leopardo's attorney asked
3 you some questions about this recording. Do you
4 remember?

5 A. Yes.

6 Q. He asked you some questions about this page
7 specifically. Do you recall that?

8 A. Yes.

9 Q. I'm going to ask you some additional questions.
10 Please take your time to review as much as you need to.

11 A. Okay.

12 Q. All right. In the middle of the page, towards
13 the bottom of the page, you say, "But did you even get a
14 chance?" Do you see that?

15 A. Yes.

16 Q. Do you remember Leopardo's attorney asking you
17 about that?

18 A. Yes.

19 Q. What did you mean when you asked Leopardo, "But
20 did you even get a chance?"

21 A. He want to be the first one to kill Lil Guasón.

22 Q. In the paragraph immediately above that, Leopardo
23 says, "Anxious and waiting, wanting to get to go at him,
24 you know, before the time, you know, and eat him first
25 myself, you know." What do you understand Leopardo to

1 mean when he says that?

2 A. That he wanted to be the first one to kill Lil
3 Guasón.

4 Q. And after you asked, "Did you even get a chance,"
5 how did he respond?

6 A. No.

7 Q. What's the rest of his response?

8 A. But, that he was -- he was -- at least he cut his
9 head off.

10 Q. What did you understand him to mean?

11 A. Even though he -- I mean, he did something crazy
12 to Lil Guasón.

13 MR. SALVATO: Objection. That's pure
14 speculation.

15 THE COURT: I'm sorry. I can't hear.

16 MR. SALVATO: That's speculation.

17 MS. MARTINEZ: The question was: What did
18 you understand him to mean?

19 THE COURT: Objection overruled.

20 BY MS. MARTINEZ:

21 Q. When Leopardo says, "No, man, at least I got to
22 cut the son of a bitch's head off," what did you
23 understand him to mean?

24 A. That he killed Lil Guasón. I don't know whether
25 Lil Guasón was alive or not.

1 Q. Let's go to Government's Exhibit 18-A-1. Who is
2 this recording with?

3 A. Leopardo, Gatito, from PVLS.

4 Q. Let's turn to page -- well, actually, what's the
5 date of this recording? I'll blow it up so you can see
6 better.

7 A. Okay. It's May 15, 2014.

8 Q. Do you remember this recording?

9 A. Yes.

10 Q. What's happening in this recording?
11 Where was the recording?

12 A. That was the recording at the park.

13 Q. Please turn to page 30. And just to clarify,
14 when you said "the recording at the park," who were you
15 at the park with?

16 A. With Leopardo.

17 Q. For what purpose?

18 A. To find the bodies of Lil Guasón and Lagrima.

19 Q. Please turn to page 30. Leopardo's defense
20 attorney asked you some questions about this page. Do
21 you recall?

22 A. Yes.

23 Q. Please take a minute to review it, or as much
24 time as you need to review it, and then I have some
25 questions.

1 A. Okay.

2 Q. Do you recall where you were during this section
3 of the recording?

4 A. We were still walking.

5 Q. Where were you walking to?

6 A. We were walking at the park.

7 Q. Had you yet reached the location where he showed
8 you the bodies were buried?

9 A. No.

10 Q. Now, Leopardo's attorney asked you about one -- a
11 line from you, sort of in the middle of this page, that
12 says, "No, we'll also put that motherfucker next to
13 those two chickens, man." Do you remember him asking
14 you about that?

15 A. Yes.

16 Q. What did Leopardo say right before you said that?

17 A. That he was -- he would find a place bury another
18 body in the park.

19 Q. Why did you respond to that by referencing the
20 two chickens?

21 A. Can you repeat that?

22 Q. Sure. First of all, when you said "those two
23 chickens," who were you talking about?

24 A. Lagrima and Lil Guasón.

25 Q. When Leopardo showed other areas, why did you

1 respond by talking about the two chickens?

2 A. Just to find out where -- where the bodies.

3 Q. Why -- which bodies?

4 A. Lagrima's and Lil Guasón.

5 Q. Why were you trying to find those bodies?

6 A. Because I need to find out where it was, to give
7 it to my handler.

8 Q. In -- the next thing that Leopardo says, in
9 response to you, is, "But there are other areas that are
10 even better, man. It's really nice over there. You'll
11 see. That's why we chose it, you know." What is he
12 talking about?

13 A. He's talking about the park.

14 Q. And, in particular, what areas is he talking
15 about?

16 A. He's talking about where Lagrima and Lil Guasón
17 was buried.

18 Q. Now, both right before and right after the
19 section we're talking about, you reference hits and
20 children. Do you see that?

21 A. Yes.

22 Q. What is that about?

23 A. There was some kids. I don't know if they were
24 not at school at that time or what they were doing, and
25 they were just walking by.

1 Q. You addressed them. You say, "Hey, your mother
2 is coming. You guys should be in school." Why did you
3 do that?

4 A. Because, you know, they have no idea what they
5 were -- what they were doing over there, and, I know
6 that there were two dead bodies somewhere in that park,
7 so, I didn't want to see these kids around there.

8 Q. Leopardo's attorney asked you about the marijuana
9 that you had on the day of this recording.

10 A. Yes.

11 Q. Why did you bring marijuana the day that you were
12 meeting Leopardo?

13 A. Oh, just to make Leopardo comfortable.

14 Q. What do you mean by that?

15 A. Not to suspect anything about me.

16 Q. Were you intending to smoke the marijuana?

17 A. No.

18 Q. What were you intending to do with it?

19 A. Just give it to him, and it was up to him what he
20 wants to do.

21 Q. Why did you want to give him marijuana?

22 A. Because I know he always talk about it. He likes
23 marijuana. He -- some conversations that I have with
24 him, he says, "Oh, we should go and smoke a joint and
25 walk, and I show you at the park."

1 Q. When did you alert your handler that you had the
2 marijuana?

3 A. As soon as I, I got there.

4 Q. Please turn to Government's Exhibit 21-A-1.
5 Who is this conversation with?

6 A. With Duende from PVLS.

7 Q. Please turn to page four. One of the defense
8 attorneys ask you about this page. Do you recall?

9 A. Yes.

10 Q. Please take a minute to review it, and then I
11 have a couple questions.

12 A. Okay.

13 Q. What was Duende telling you about in this
14 section?

15 A. Um, he was pretty much telling me that Taliban
16 was -- was the one who kill the guy in Chirilagua.

17 Q. The defense attorney asked you about this long
18 paragraph by Duende right in the middle of the page. Do
19 you remember that?

20 A. Yes.

21 Q. At the end of that paragraph that she asked you
22 about, in the last two sentences, you say -- or he says,
23 excuse me, "You can tell the son of a bitch is solid
24 man, you know. But, so, right, if they want to test him
25 again, well, the dude is there, dog."

1 Do you understand what he's talking about?

2 A. Yes.

3 Q. Who is he talking about?

4 A. Talking about Taliban.

5 Q. When he says that Taliban is solid, what does
6 that mean?

7 A. That means that they -- they trust Taliban, that
8 he -- he's already -- that he kill someone, that he is
9 solid.

10 Q. Now, you said they trust him and you said he
11 already killed someone. Is there a connection for MS-13
12 between trusting someone and someone killing someone?

13 A. Yes. Because that's the rule of MS-13. You need
14 to show them, you need to prove your loyalty to them.

15 Q. What happens to -- someone who is associated with
16 MS-13, either as a *chequeo* or a homeboy, what happens to
17 their status or reputation in the gang after they kill
18 someone?

19 A. Um, they become a full homeboy, a recruit, and,
20 you get pretty much a homeboy and your reputation goes
21 up.

22 Q. At some point, did you talk to Taliban directly?

23 A. Yes, on the phone.

24 Q. Please turn to -- to Government's Exhibit 22-A-1.
25 Who were you talking to in this recording?

1 A. Duende from PVLS, and Taliban.

2 Q. And it says Lil Payaso, too. Do you see that?

3 A. Yes.

4 Q. Were you also talking to Lil Payaso in this
5 recording?

6 A. Yes.

7 Q. Please turn to page two. You were also asked
8 about this page. Do you remember that?

9 A. Yes.

10 Q. Please take a moment to review it and then I have
11 a couple questions.

12 A. Okay.

13 Q. Now, the defense attorney asked you, when you
14 were looking at this page, whether Taliban talks about
15 killing someone with Duende and with Gatuso. Do you
16 remember that question?

17 A. Yes.

18 Q. Setting aside the "with Duende" and "with Gatuso"
19 part, does Taliban talk about a murder on this page?

20 A. Yes.

21 Q. Where does he talk about a murder?

22 A. When he told Lil Payaso that he, pretty much
23 Duende already saw his photo, his picture.

24 Q. What does photo or picture mean?

25 A. That means in the gang code that he already kill

1 someone.

2 Q. Can you explain further what that code means or
3 why that code means that?

4 A. It means that when the gang member go and kill
5 someone, like, they can use a gun, and, when -- the
6 firearm goes off, you can't -- you don't see a flash,
7 but you see, kind, of something, on the gun. So, they
8 call it -- that as a picture, or photo. And they put a
9 photo, that means they -- they're the one who kill the
10 person, or they're the one -- the gang -- took a picture
11 means they kill someone.

12 Q. The murder in Chirilagua that you're talking
13 about, were you able to learn from other gang members
14 what -- what type of weapon was used in the murder?

15 A. Yes.

16 Q. What weapon was used in that murder in
17 Chirilagua?

18 A. I can't recall it, but I believe it was a nine
19 millimeters.

20 Q. Was it a firearm?

21 A. Firearms, yes.

22 Q. Right before Taliban talks about his photo,
23 immediately before that, he says, "Because I'm
24 determined, you know." What do you understand that to
25 mean?

1 A. That he's determined to jumped into Park View,
2 PVLS clique.

3 Q. Please turn to page three. You were also asked
4 about this page. Do you recall?

5 A. Yes.

6 Q. Take as much time as you need to review it. I'm
7 going to ask you primarily about that first long
8 paragraph by you.

9 A. Okay.

10 Okay.

11 Q. You were asked about that paragraph in
12 cross-examination. Do you recall?

13 MS. AMATO: Objection, I did not ask the
14 witness about this page.

15 THE COURT: Say again.

16 MS. AMATO: It misstates what occurred in
17 cross-examination. I did not ask the witness about this
18 question.

19 MS. MARTINEZ: My mistake. I can rephrase.

20 THE COURT: All right.

21 BY MS. MARTINEZ:

22 Q. You were asked about this page on
23 cross-examination, if you recall?

24 A. Yes.

25 Q. In that first long paragraph by you, towards the

1 end of it, you say, "Because of that -- because of the
2 crazy shit that you did, that you were good to go." Do
3 you see that?

4 A. Yes.

5 Q. What were you talking about?

6 MS. AMATO: Your Honor, I'm going to object.
7 It's beyond the scope of cross.

8 THE COURT: Objection overruled.

9 BY MS. MARTINEZ:

10 Q. When you said, "Because of the crazy shit you
11 did, that you were good to go," what were you talking
12 about?

13 A. I was talking about the murder of Chirilagua,
14 that he -- that he already kill someone.

15 Q. Who were you talking to?

16 A. Taliban.

17 Q. How did Taliban respond to you in the next line?

18 A. He says, "Yeah, for sure."

19 Q. All right. Continuing now to page six, take as
20 much time as you need to review. I'm going to ask you
21 primarily about the first part of that page.

22 A. Okay.

23 Q. That first thing that Taliban says there, that
24 first paragraph, he says, "Yeah, yeah. Hey, whenever it
25 happens, right, you know, because, because I want this

1 thing to be done with already, you know, I want to do
2 that, that little dance." Do you understand what he's
3 talking about?

4 A. Yes.

5 Q. What does he mean by, "I want to do that little
6 dance"?

7 A. That he wants to be jumped in and get the beating
8 for 13 seconds.

9 Q. In June of 2014, the time of this recording, what
10 did someone have to do in MS-13 in order to be jumped in
11 as a homeboy?

12 A. Kill someone.

13 Q. To your knowledge, based on what you learned from
14 other gang members and Taliban himself, had Taliban
15 killed someone by the time of this recording?

16 A. Yes.

17 Q. Please turn to page seven. Take as much time as
18 you need to review. I'm going to ask you primarily
19 about the last part of the page.

20 A. Okay.

21 Q. Okay. At the very bottom of the page, Lil Payaso
22 says, "When it comes to that, there should be a notice,
23 you know, so that we can all be there, you know." Do
24 you understand what he's talking about?

25 A. Yes. When they jump -- planning to jump in

1 Taliban.

2 Q. And, why would -- what do you understand him to
3 mean, notice?

4 A. They all should -- all should be -- be on the
5 same page, so, they talk to each other, and Taliban
6 should tell them when he wants to do it, or where.

7 Q. Defense counsel also asked you about going with
8 Gatuso, Lil Gatuso, to look for the gun. Do you recall
9 that?

10 A. Yes.

11 Q. Where did you go with Gatuso to look for the gun?

12 A. I went to the place that Taliban went to get the
13 gun from.

14 MS. AMATO: Objection, there's no
15 foundation.

16 MS. MARTINEZ: I can draw that out, Your
17 Honor.

18 THE COURT: Overruled. Go ahead. Draw it
19 out.

20 BY MS. MARTINEZ:

21 Q. Were you able to learn from gang members where
22 Taliban got the gun?

23 A. I was able to -- I learn it from, from Gatuso and
24 from Duende.

25 Q. And, after you learned where he got the gun, what

1 did you do?

2 A. We -- I meet up with Gatuso and we went to the
3 apartment that they got the gun from.

4 Q. Where was the apartment?

5 A. Somewhere in Chirilagua.

6 Q. What happened when you got to the apartment?

7 A. We knock on the door and the guy open the door.

8 Q. And then what happened?

9 A. And then he asked questions and I asked questions
10 as well.

11 Q. Did you learn any information about the gun?

12 A. Yes.

13 MR. AQUINO: Objection, hearsay, Judge.

14 MS. MARTINEZ: I'm not asking for what he
15 learned, just whether he learned any information, Your
16 Honor.

17 THE COURT: The next step would be, if he
18 was to repeat it, would be hearsay.

19 MS. MARTINEZ: Yes.

20 THE COURT: Go ahead.

21 BY MS. MARTINEZ:

22 Q. Without saying what the person you spoke to said,
23 from that conversation were you able to learn
24 information about the gun?

25 A. Yes.

1 MR. AQUINO: Objection, Judge, hearsay.

2 THE COURT: He's not reciting what he
3 learned. Objection overruled.

4 BY MS. MARTINEZ:

5 Q. And based on what that person told you, was there
6 something you did?

7 A. Yes. I gave the information to my handler.

8 Q. Was there anyone else you spoke to about the gun
9 after that point?

10 A. No, just my handlers.

11 Q. Why did you try to go find the gun?

12 A. Because that's -- that was the first thing they
13 need to find, the gun that was used to kill the guy in
14 Chirilagua, and I want to know who was the one who gave
15 the gun to him.

16 Q. Were you able to find the gun?

17 A. No.

18 MS. MARTINEZ: No further questions, Your
19 Honor.

20 THE COURT: You can step down, sir. Thank
21 you.

22 MR. SALVATO: Your Honor, I had just a few
23 questions, if I could, on recross.

24 THE COURT: No, there's no recross. There's
25 no recross.

1 You can step down.

2 MR. SALVATO: Could we approach just
3 briefly, Your Honor?

4 (Thereupon, the witness withdrew from the
5 stand.)

6 THE COURT: Yeah, you can approach sidebar.
7 Come to sidebar.

8 (Thereupon, the following side-bar
9 conference was had.)

10 MR. SALVATO: Thank you, Your Honor. Your
11 Honor, on the government's redirect, they elicited
12 testimony from this witness that he brought a marijuana
13 cigarette to the park because my client, Christian Lemus
14 Cerna, needed a joint or wanted a joint.

15 In the transcript, it indicates that -- and
16 I can show the Court -- and this was all I was going to
17 ask him -- is that it was actually Junior who said, "I
18 need a weed eater."

19 And my client said, "A joint?"

20 And then Junior says, "I need a joint."

21 And then my client said, "Go ahead."

22 That's directly contradictory to what he
23 just told the jury on redirect. And I don't -- I think
24 it would be appropriate for me to just ask him those
25 questions.

1 THE COURT: Okay. I'm sorry. What were you
2 going to say?

3 MS. MARTINEZ: Your Honor, I was going to
4 respond to any -- we can go get him back, if Your Honor
5 rules, certainly, but Mr. Salvato asked 30 or 40
6 questions about this marijuana joint on
7 cross-examination.

8 This transcript is in evidence. He can make
9 argument to the jury. He had ample opportunity to ask
10 whatever he wanted about the marijuana joint, and he
11 did, and we went on for 10 or 15 minutes about that
12 marijuana joint on cross-examination. I don't think I
13 opened any new door on redirect.

14 Certainly we can get the witness, but we
15 have to move quickly, unless they're taking him out of
16 the building.

17 THE COURT: Ask them to bring him back.
18 But generally, there's not recross.

19 MR. SALVATO: I understand.

20 THE COURT: All right.

21 MR. SALVATO: I wouldn't have ask for it
22 other than that.

23 THE COURT: All right.

24 MS. MARTINEZ: I have to leave the courtroom
25 to make sure they can go get him.

1 THE COURT: Sure.

2 (Thereupon, the side-bar conference was
3 concluded.)

4 MS. MARTINEZ: Just a moment, Your Honor.
5 (Witness resumed stand.)

6 RECROSS-EXAMINATION

7 BY MR. SALVATO:

8 Q. Good morning, Mr. Garcia.

9 A. Good morning.

10 Q. You just told the jury in redirect that you went
11 and got this marijuana cigarette because Christian would
12 have wanted the joint, correct?

13 A. Yes.

14 Q. Can I ask you to take a look at what's already
15 been introduced Government's Exhibit 18-A-1, page 19.
16 Can you read that page to yourself, please. You can
17 read it with the notebook or on the screen, whatever
18 works.

19 THE COURT: It's not on the screen any more.

20 MR. SALVATO: Are you looking at the
21 notebook or -- I'll put it back on the screen.

22 THE WITNESS: So, what page?

23 BY MR. SALVATO:

24 Q. Page 19 in the right-hand corner.

25 THE COURT: Is this what you're trying to

1 show, Mr. Salvato? Can you look at the screen and see
2 if that's what you're trying to show?

3 MR. SALVATO: Right there, Your Honor.

4 THE WITNESS: Page 11 or page 19 from the
5 right side?

6 BY MR. SALVATO:

7 Q. Page 19 on the right side.

8 A. The far right side?

9 Q. Far right side, page 11, where it says
10 unclassified page 11. Far right side, page 19.

11 A. Okay.

12 Q. So, in that exchange, you said, "I need a weed
13 eater," is that right?

14 A. Yes.

15 Q. And the word is "I need," correct?

16 A. Yes.

17 Q. And then, Christian responds, "A joint?"

18 And then right there, sir, Mr. Garcia, you said,
19 "I need a joint," correct?

20 A. Yes.

21 Q. And, but you just told the jury that you got the
22 joint for Christian.

23 A. Yes, but --

24 Q. Okay.

25 A. -- at that time we were walking at the park there

1 was a lot of grass, and that's what I meant, a weed
2 eater to cut the grass. It would be easy for us. And
3 then he, he didn't understand what was a weed eater, and
4 he said, "A joint?"

5 So I just follow what he was saying. I was not
6 saying no, I just -- I was just, you know, agree with
7 him even though I know what he meant, but I was just,
8 agree what he saying.

9 Q. But you said, "I need a joint."

10 A. Yes.

11 Q. Because, the joint was for you?

12 A. I said, yeah.

13 MR. SALVATO: That's all the questions.
14 Thank you, Your Honor. I appreciate it.

15 Thank you, Mr. Garcia.

16 MS. MARTINEZ: May the witness be excused,
17 Your Honor.

18 THE COURT: Yeah. You're excused. Thank
19 you.

20 (Thereupon, the witness withdrew from the
21 stand.)

22 MS. MARTINEZ: The government calls Special
23 Agent Michelle Miller.

24 (Witness sworn.)

25 THE WITNESS: Yes.

1 THE COURT: You may proceed.

2 THEREUPON, MICHELLE L. MILLER, having been
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MARTINEZ:

6 Q. Good morning.

7 A. Good morning.

8 Q. Would you please state and spell your full name
9 for the record.

10 A. Michelle Lee Miller; M-i-c-h-e-l-l-e, L-e-e,
11 M-i-l-l-e-r.

12 Q. Where are you employed?

13 A. The Federal Bureau of Investigation.

14 Q. What's your current position with the FBI?

15 A. I'm a supervisory special agent of the Mutual
16 Legal Assistance Unit, under International Operations
17 Division.

18 Q. How long have you been a supervisory special
19 agent?

20 A. Since April of last year, 2015.

21 Q. Prior to 2015, what was your position?

22 A. I was a special agent at the Washington Field
23 Office.

24 Q. How long have you worked for the FBI?

25 A. Since January of 2005.

1 Q. Were you involved in the excavation of two bodies
2 in May of 2014?

3 A. Yes, I was.

4 Q. Where was the excavation?

5 A. It was at Holmes Run Park in Falls Church,
6 Virginia.

7 Q. How did you come to be involved?

8 A. I was actually -- I'm actually -- I was a member
9 of the evidence response team at the Washington Field
10 Office. And the team leader, Tom -- Special Agent Tom
11 O'Connor, contacted me to advise that there was a
12 potential for a human remains recovery in the park, and
13 asked me if I was available to assist.

14 Q. You said the evidence response team. What is
15 that?

16 A. The evidence response team or ERT, as it's
17 referred to, is a subspecialty or an ancillary duty of
18 agents that either have a specialized background or an
19 interest in helping assist with crime scene management
20 and recovery.

21 Q. Once you were alerted to this potential crime
22 scene, what steps did you take? What initial steps did
23 you take?

24 A. That was actually on May 16th, which was a Friday
25 afternoon when I received the telephone call. I

1 actually met Tom and a couple other agents, case agents,
2 and police officers at the Mason District Fairfax County
3 Police Department to discuss the case.

4 At that time they gave me a short briefing,
5 outline of the case, and then we went to the site to
6 conduct a site survey.

7 Q. Where was the site?

8 A. It was -- it was in Holmes Run Park. We accessed
9 it through a back -- kind of a back trail or a hiking
10 trail, or what I refer to as a billy goat trail, from a
11 nearby school. And I couldn't tell you what the name of
12 the school is.

13 MS. MARTINEZ: Your Honor, may we publish
14 what has been already admitted as Government's
15 Exhibit 96-B.

16 THE COURT: Yes.

17 BY MS. MARTINEZ:

18 Q. Do you recognize what's depicted here?

19 A. Yes. To the -- on the right-hand side of the
20 photograph is actually the school I was discussing. And
21 then the -- this creek bed is part of the -- basically
22 went through one of -- the middle of this, the scene
23 that we excavated.

24 Q. All right. You said a creek. I think if you
25 touch that screen you might be able to make a mark on

1 it. Can you mark the creek that you see there?

2 A. Yeah. This is actually a creek bed all the way
3 through here.

4 MS. MARTINEZ: Your Honor, for the record,
5 the witness has drawn an S-shaped mark on the screen,
6 basically in the middle of the picture.

7 THE COURT: So noted.

8 BY MS. MARTINEZ:

9 Q. And could you point to -- on the screen again,
10 make a mark, the school that you were talking about?

11 A. This is the school here. We actually parked our
12 vehicles -- this is a tennis court back behind the
13 school. We actually parked our vehicles here and
14 entered a billy goat trail and worked our way down
15 through here.

16 MS. MARTINEZ: Your Honor, for the record,
17 the witness has identified the school as the large
18 building on the right of the picture, the tennis courts
19 as a spot above the school, the way that the picture is
20 situated, and has drawn a line indicating a trail from
21 the tennis courts.

22 THE COURT: So noted.

23 BY MS. MARTINEZ:

24 Q. Once you entered on that billy goat trail, where
25 did you go?

1 A. We worked -- I mean, I don't have GPS
2 coordinates, so I couldn't tell you exactly. We kind of
3 worked our way down. We had a couple of individuals
4 that had a general idea of where the sites of interest
5 were. We basically worked our way down into -- and
6 again, I couldn't tell you exactly where, but it was in
7 this general area.

8 Q. What did you do when you first arrived to the
9 site, to that general area?

10 A. I started -- I looked around it, again, conducted
11 a basic site survey, which is just a visual survey,
12 looking for any evidentiary -- what we would call grave
13 markers or -- in the general area of interest.

14 Q. What did you notice?

15 A. A couple different things. The -- there's always
16 a -- some of the indicators of a grave or a clandestine
17 burial, sometimes you have a primary, what they refer to
18 as a primary and/or a secondary depression. And a lot
19 of -- the primary depression is basically a demarcation
20 of the initial grave outline. A secondary depression
21 sometimes results once a body starts to decompose, and
22 the soil will actually start to sink within the primary
23 depression.

24 A couple other things is I noticed that there was
25 dirt on top of leaves, that it was actually a different

1 color. You could actually see the -- the changes of
2 color of the soil.

3 And, to explain the significance of this --

4 THE COURT: Excuse me.

5 I would prefer you ask one question at a
6 time, as opposed to long narrative response.

7 MS. MARTINEZ: Yes, Your Honor. I just
8 didn't want to interrupt her, but I'll make sure to
9 break it up.

10 BY MS. MARTINEZ:

11 Q. You're talking about dirt on top of leaves.
12 Please explain the significance of you observing dirt on
13 top of leaves at the site.

14 A. So, when somebody digs a hole in the ground,
15 basically, I mean, as you know, you dig the dirt and it
16 gets piled onto, you know, on a -- in an area next to
17 the hole.

18 As you go deeper into the earth, the color and
19 striations of the soil change. Anybody who's a gardener
20 or likes to work in their yard knows that a lot of times
21 you have a nice dark rich soil on top, and as you get
22 further down sometimes the soil gets lighter.

23 This actually changes, depending on where you are
24 in the, you know, geography. I mean, it changes among
25 states, it changes within the United States, and it

1 changes across the world. But you can definitely see
2 stratification changes and dirt color changes.

3 When you dig a hole in the ground, you're
4 basically turning everything upside down. You're
5 basically turning -- taking everything out of that grave
6 and throwing it outside the grave. So the dark soil
7 always ends up on the bottom, and the lighter soils that
8 are in the base of the hole end up on top.

9 Well, then, most people, when they throw dirt
10 back into a hole, they don't always take the dirt from
11 the top again. They just kind of scoop it from the
12 bottom and it cascades down.

13 So when a -- when the dirt goes back in the hole,
14 the majority of the time it ends up upside down, so you
15 end up with darker colors on the bottom, with lighter
16 colors on top.

17 And in addition to that --

18 THE COURT: Next question, please.

19 BY MS. MARTINEZ:

20 Q. Okay. What did your observations indicate to
21 you, briefly?

22 A. So, you could actually see the dirt halo of where
23 the dirt had actually been pulled out of the hole, and
24 then there was actually what they call manual
25 bioturbation, or the mixing of the leaves and the dirt,

1 where you're seeing lighter soil on top of leaves,
2 which, if you think about the seasons, you know, there
3 shouldn't be dirt on top --

4 THE COURT: Excuse me.

5 THE WITNESS: -- of leaves that just left
6 within the last season.

7 THE COURT: Excuse me. I know that you have
8 a lot of information. We need a laser focus here.

9 Next question.

10 MS. MARTINEZ: Yes, Your Honor.

11 BY MS. MARTINEZ:

12 Q. I'm going to walk you through question by
13 question. Just stick with shorter answers and I'll just
14 ask a follow-up if necessary. Okay?

15 So, you've described observing lighter colored
16 dirt and dirt on leaves. Briefly, what did that suggest
17 to you?

18 A. It definitely suggested that there was a -- some
19 type of manmade disturbance to the ground.

20 Q. Was that site where you observed the lighter
21 colored dirt and the dirt on top of leaves, was that
22 site eventually excavated?

23 A. Yes, it was.

24 Q. Were you involved in the excavation?

25 A. Yes, I was.

1 Q. Was the excavation that same day when you did
2 this initial site survey?

3 A. No, it was not.

4 Q. Why not?

5 A. The creek bed -- the way that we actually entered
6 was through like this billy goat trail. There's a lot
7 of equipment that is used during an excavation, and it
8 would not only be safe, but very laborious, to try and
9 get all the equipment in through this back trail.

10 And the only other way, actually, would be to
11 come in -- there's a -- I believe there's a road that
12 actually enters the site right through here
13 (indicating). And the road that actually crossed this
14 creek bed, there had just been a lot of rain. The creek
15 bed was extremely high.

16 It would have been extremely -- impossible for
17 somebody to walk across it carrying equipment and it
18 would be very -- semi-dangerous for a vehicle to try to
19 cross. So we suggested --

20 Q. Okay. Let me --

21 A. -- waiting a day.

22 Q. -- ask another question so we can stay on track
23 here.

24 MS. MARTINEZ: And, Your Honor, for the
25 record, let me just say that when she was talking about

1 the street that crosses the creek, she drew a line in
2 the middle of the picture, across the line she
3 previously indicated, the creek.

4 THE COURT: All right. Thank you.

5 BY MS. MARTINEZ:

6 Q. When was this, the site excavated?

7 A. It would have been on the Sunday, so the 18th.

8 Q. How did you access the site on Sunday, the 18th?

9 A. We actually brought all the vehicles down across,
10 through the road and across the creek bed.

11 Q. Would you please take a look at Government's
12 Exhibit 87-A through L, inclusive. Can you look through
13 all of them, 87-A through L.

14 A. Is it possible for me to take them out --

15 Q. Absolutely.

16 A. -- so they're easier to maneuver?

17 Q. Do you recognize these photos?

18 A. Yes. They're all photos taken from the first
19 site that we excavated.

20 MS. MARTINEZ: Your Honor, government moves
21 into evidence 87-A, alpha, through L, Leo, inclusive.

22 MR. AMOLSCH: Your Honor, can we approach?

23 THE COURT: Yes.

24 (Thereupon, the following side-bar
25 conference was had.)

1 MR. AMOLSCH: Your Honor, as it relates to
2 the government moving in Exhibits, the photographs, 87-A
3 through K, we don't have any objection to it at this
4 point, but, just pictures of the grave site and the
5 body.

6 87-L, we think is -- there's other ones we
7 want to get to as well -- is highly problematic and
8 prejudicial and really unnecessary, as it relates to the
9 government's proof.

10 They're going to have autopsy reports.
11 They're going to describe the manner of death. And so,
12 this one, we would object to.

13 Once we are done with this one --

14 THE COURT: What's your objection?

15 MR. AMOLSCH: It's highly prejudicial. It's
16 inflammatory. No reason -- 403, there's really no
17 reason to introduce this particular photo with the
18 government's proof, other than to inflame the jury about
19 the nature of the death and how grotesque it is.

20 THE COURT: Do you question if this was dug
21 up, and it looked like that when it was dug up?

22 MR. AMOLSCH: No. I'm not questioning the
23 veracity of the photo. I'm saying the probative value
24 is outweighed by the prejudice to the jury of seeing
25 this, not necessarily inflaming them as it relates to

1 the body.

2 The government has a right to prove what
3 happened, and there are other photos that illustrate
4 that.

5 They're going to have testimony about the
6 burial and about what happened, which we've already
7 heard. They're going to have, I understand, the autopsy
8 doctor talk about the manner of death. They're going to
9 have the witness from Smithsonian, Hunt, talk about the
10 wounds.

11 The photos are unnecessary, Judge, for the
12 government's proof. And especially whatever probative
13 value they have is outweighed by the inflammatory and
14 prejudicial nature of it.

15 MS. MARTINEZ: Your Honor, as far as
16 gruesome pictures go, this is hardly the most gruesome
17 picture, in a gruesome murder place. The picture shows
18 a body, somewhat decayed. There are no open wounds or
19 blood or oozing or gore. And, it's highly probative to
20 the government's case, the way that this body appeared
21 when it was dug out of the grave, the way that this
22 individual looks.

23 There's been testimony about his size and
24 about the way that he was buried, and the way that he
25 was killed. The picture is showing things that are

1 highly probative.

2 And again, the picture that the defense
3 counsel is objecting to, 87-L, there's no blood.
4 There's no guts. There's no gore. There is no slash
5 from a machete showing open, exposed bone. It's highly
6 probative.

7 And, frankly, as far as the kind of evidence
8 that's going to be -- that's going to get into
9 testimony, this is -- this is minimal compared to that.
10 And it has a high probative value.

11 THE COURT: All right.

12 MR. AMOLSCH: Your Honor, I would say I
13 agree with the government that of the pictures they're
14 going to try to introduce, this is on the lower end of
15 the objectionable scale. And I don't know when the
16 appropriate time would be to discuss those pictures,
17 maybe now, maybe at lunch when we get back.

18 THE COURT: Do you have a whole stack of
19 them to object to?

20 MR. AMOLSCH: Assuming the government --
21 they haven't tried to move them in yet.

22 THE COURT: But they're in the notebooks.

23 MR. AMOLSCH: I understand. So -- and I
24 don't want to presume to take the government's case, but
25 they are like -- something like this, Judge, that are

1 just out of control in terms of what the government
2 needs to prove.

3 THE COURT: Whatever discussion -- if
4 somebody is holding the head up on their shoulders, I
5 mean, I can't sanitize what the facts are, if those are
6 the facts. The jury is going to have to see them.

7 Let me do this. I don't want to waste the
8 jury's time. I'm generally going to let all the
9 pictures -- I'm generally going to let them all in.

10 If there are four or five you want to show
11 that you think I ought to put out, I'll send the jury
12 out for the morning break or would you want to do it
13 later? Because I don't want to keep on the sidebar.

14 MR. AMOLSCH: If you anticipate moving in
15 the Government's Exhibit 90 during this witness --

16 MS. MARTINEZ: All the pictures in the
17 government exhibits at the site we anticipate moving in
18 at this point in time.

19 MR. AMOLSCH: If we do it with this witness,
20 do it now and not waste the jury's time.

21 MS. MARTINEZ: I don't have 90 in front of
22 me.

23 MR. AMOLSCH: This one. It's the picture of
24 the body.

25 MS. MARTINEZ: Your Honor, I think it would

1 be prudent to deal with all the pictures at once. I
2 don't, off the top of my head, remember if this comes
3 in, without seeing the series, with this witness or not.
4 So there's no reason to do it with multiple witnesses if
5 we can deal with everything all at once.

6 THE COURT: All right. I'll send the jury
7 out on the break.

8 MR. AMOLSCH: Thank you, Judge.

9 THE COURT: Ladies and gentlemen, I need to
10 take up matters with counsel, and it may be 20 minutes,
11 and so we will give you a break now. Take the morning
12 recess. You should take your break now. We will let
13 you know how much time it takes up before we start our
14 break. I have to take up matters with counsel. Thank
15 you very much.

16 (Jury not present.)

17 MS. MARTINEZ: Your Honor, may the witness
18 step down?

19 THE COURT: You can step down. We'll have
20 you come back. Thank you.

21 (Witness withdrew from stand.)

22 (Thereupon, the side-bar conference was
23 concluded.)

24 THE COURT: You may be seated.

25 Mr. Amolsch, give me your list.

1 MR. AMOLSCH: Thank you, Judge. I'm asking
2 Ms. Bishop to put them up for the Court.

3 THE COURT: I have them right here in front
4 of me.

5 MR. AMOLSCH: Thank you, Judge.

6 If we can look at Exhibits 90-A through
7 90-F, Judge. We could begin with 90-A. And I'll
8 preface this by saying, Judge, in the colloquy at the
9 sidebar, the government, in arguing for the
10 admissibility of the 87-A-1, said this isn't one that's
11 blood and guts and machete wounds and all of those
12 things. And I do appreciate the government's
13 distinction.

14 THE COURT: Her point was that there will be
15 much more gruesome ones coming. That's what her point
16 was.

17 MR. AMOLSCH: I agree. And so as it relates
18 to that distinction, we agree with the government that
19 that's on the lower end of the objectability scale.

20 But as it relates to 97-A, 97-B, which --
21 97-A is a head --

22 THE COURT: 90?

23 MR. AMOLSCH: I'm sorry, 90-A, I apologize,
24 Judge. 90-A is a half face of a head.

25 90-B is, it looks to be the neck without a

1 head, with blood and guts and all the things the
2 government described.

3 90-C is probably -- is obviously less severe
4 than 90-A and B.

5 90-D doesn't appear to be problematic.

6 90-E, I think, is also inflammatory and
7 unnecessary; and 90-F.

8 So, as it relates to the government -- to
9 the judge saying point out the four or five that we
10 would submit are unnecessary, it would be 90-A, 90-B,
11 90-E, and 90-F, which at this point are the four that we
12 think are really unnecessary.

13 And as the Court pointed out, there has been
14 testimony about the murders. There has been
15 testimony --

16 THE COURT: But there's been graphic
17 testimony about heads cut off --

18 MR. AMOLSCH: I agree.

19 THE COURT: Let me finish.

20 There has been graphic testimony about
21 holding the head over the shoulders and holding the body
22 over the shoulder.

23 I don't -- I can't take something that's
24 been offered in testimony and then somehow remove from
25 the jury evidence that corroborates the testimony.

1 So, I mean, if your idea is it's gruesome,
2 it is gruesome. But the case is gruesome.

3 MR. AMOLSCH: We're not -- and I don't want
4 to -- please correct me if I'm wrong with defense
5 counsel. We're not objecting at all to the government's
6 proof as to the manner in which they were killed. So,
7 there hasn't been any cross-examination about, no, the
8 head wasn't cut off, or, no, his face wasn't sliced in
9 half, or whatever gruesome testimony we heard.

10 We agree that -- the manner of death, Judge,
11 isn't in dispute. The dispute rests elsewhere, not in
12 the way in which this happened.

13 So, the government's testimony, the autopsy
14 reports, there -- it's all covered, and nobody's arguing
15 about it. They don't need it to bolster their case or
16 to overwhelm -- overcome an objection we're making as to
17 the cause of death.

18 This is -- there's really, in my opinion,
19 Judge, no reason to introduce this evidence except to
20 shock the conscience of the jury.

21 We're not arguing about how this happened.
22 So, I don't know why the government -- the Court
23 shouldn't let the government rely on testimony, autopsy
24 reports, expert testimony from the Smithsonian as it
25 relates to -- and the manner in which the body was

1 discovered.

2 None of that, Judge, is at issue. So from a
3 probative point of view, these pictures actually add
4 almost nothing, because we haven't argued about it at
5 all. So that would be our objection, Judge.

6 THE COURT: All right. Thank you.

7 MS. MARTELL: Your Honor, we would join the
8 motion. I --

9 THE COURT: I assume that everybody joins
10 every motion, unless you tell me otherwise.

11 MS. MARTELL: I understand, Your Honor. But
12 we like to add on that, that we think these photos
13 should be excluded. This is only to inflame the
14 passions of this jury.

15 Further, this is not -- this doesn't depict
16 the killing. This depicts a decomposed body. Yeah,
17 there may be a head that -- that's off the body, or
18 bones sticking out consistent with some of the
19 testimony.

20 But, what inflames the passion of the jury
21 is that this does not look like someone who was just
22 murdered. This is a body in its -- in a decomposed
23 state, that has been in the ground, which intensifies
24 these photos and makes them highly -- overly
25 prejudicial.

1 And the government put on the record what
2 they -- what they deem probative value.

3 Well, with all the pictures that we're not
4 objecting to that will come into evidence, and with the
5 testimony, that will meet their goals and the probative
6 value which they seek to -- to put forward with these
7 photos.

8 These pictures don't add to the government's
9 theory of the case. In fact, that's what makes them
10 highly prejudicial. And it's the -- the decomposed
11 state of these bodies, not the depiction of how these
12 murders occurred.

13 And there's going to be plenty of other
14 photos that show slash marks into the bones, and there's
15 going to be testimony about those slash marks into the
16 bones that's going to be consistent with --

17 THE COURT: Would you agree that this
18 evidence is relevant to Count 5, accessory after the
19 fact, having to do with the reburial of Nelson Omar
20 Quintanilla Trujillo? Would you agree that that would
21 be relevant?

22 MS. MARTINEZ: Your Honor, these pictures
23 are of the second victim, the 90-A through F pictures --

24 THE COURT: Which charge does that relate
25 to?

1 MS. MARTINEZ: They relate to Count 6, Your
2 Honor, the murder of Gerson Adoni Martinez Aguilar, Lil
3 Guasón. That's the victim whose head was severed, as
4 we've heard testimony.

5 THE COURT: This is Lil Guasón's body?

6 MS. MARTINEZ: The first --

7 THE COURT: The first set of pictures in 80,
8 what are those?

9 MS. MARTINEZ: The pictures that we were
10 putting in to this witness were of Lagrima --

11 THE COURT: Lagrima.

12 MS. MARTINEZ: -- of Nelson Omar Quintanilla
13 Trujillo.

14 THE COURT: Okay.

15 MS. MARTINEZ: These pictures that
16 Mr. Amolsch has now raised are of the second murder,
17 Your Honor, of Lil Guasón, Gerson Adoni Martinez
18 Aguilar.

19 Lagrima was the victim who the gang thought
20 was snitching. Lil Guasón was a victim who was a
21 *chequeo*, and who the testimony has established, and more
22 testimony will establish, that they severed his head
23 before burying him.

24 THE COURT: So, I want to be clear. You
25 just said that 80 deals with Lagrima. Is that right?

1 And Lagrima is -- is that right?

2 MS. MARTINEZ: Let me just, before I --

3 THE COURT: Just trying to make sure.

4 MS. MARTINEZ: Me, too.

5 We were on -- the ones that I had offered
6 through the witness who was on the stand were the 87
7 series.

8 THE COURT: Yes. Okay.

9 MS. MARTINEZ: And so the 87 series is of
10 Lagrima, Quintanilla Trujillo. And that's of the site
11 excavation of that first murder.

12 THE COURT: So, that's Count 5.

13 MS. MARTINEZ: That's -- well, Count 5 and
14 Count 4. So --

15 THE COURT: Okay.

16 MS. MARTINEZ: It relates obviously to the
17 murder, and then also to the reburial. He was excavated
18 from the place where he was reburied, of course.

19 THE COURT: And then the objections are
20 to -- now to number series 90, and 90 relates to which
21 victim?

22 MS. MARTINEZ: 90 relates to the second
23 victim, Lil Guasón, Gerson Adoni Martinez Aguilar.
24 That's Count 6 of the indictment, Your Honor.

25 And that's the victim who the testimony has

1 established, and I'll proffer there will be additional
2 cooperators who will also testify, that the gang cut off
3 Lil Guasón's head.

4 THE COURT: All right.

5 MS. MARTELL: Your Honor, in response to
6 your question -- I'm sorry.

7 MR. AMOLSCH: And just for clarification,
8 Judge, there is no -- there is no reburial of Mr. --
9 Guasón. The reburial only took place as it relates to
10 Lagrima, not to the second one.

11 THE COURT: Okay. But both bodies were
12 buried, though. There's no question about that.

13 MR. AMOLSCH: But as it relates to the
14 Court's question --

15 THE COURT: Yes, okay. All right. Thank
16 you.

17 MS. MARTELL: Your Honor, so, to answer your
18 question, we don't believe it's relevant because there's
19 no -- none of the charged -- none of the charged crimes
20 relate to digging up and reburying the body of Lil
21 Guasón, which is the individual that they -- that they
22 say is depicted in these photographs.

23 And so, a decomposed body of, of the victim
24 of Count 6, Lil Guasón, is not relevant and is -- it is
25 more prejudicial than probative at this time.

1 MR. ZIMMERMAN: Briefly, Judge, I think, if
2 I'm hearing the Court correctly -- and, of course, this
3 isn't a dispute with the accuracy of those, as proposed
4 in the government's theory, and, in fact, that these
5 events happened, that there was decapitations and
6 murders, is not in dispute at all.

7 The fact that the government --

8 THE COURT: I don't remember anybody
9 admitting that. Did anybody admit that to the jury yet?

10 I don't think anybody has. Do you? I don't
11 think anybody --

12 MR. ZIMMERMAN: Judge, the defenses have all
13 been identity defenses. They have been that the murders
14 haven't --

15 THE COURT: My question is precise.

16 MR. ZIMMERMAN: Okay.

17 THE COURT: No defendant has admitted these
18 individuals were killed, have they?

19 MR. ZIMMERMAN: No defendant has contested
20 that these individuals were killed.

21 THE COURT: You're answering a different
22 question than mine, but I appreciate why you did that.

23 MR. ZIMMERMAN: I do, Judge. But I think,
24 in fairness, the defenses that we've heard -- well, I do
25 think -- um, I think, Paiz Guevara's defense has been

1 that all of the defendants -- that Gerson, was killed
2 and he was there and he was under duress. So I think he
3 has.

4 Moreover, I think the defense of the other
5 defendants have been that -- have been identity
6 defenses. I really don't think this has been contested.

7 Moreover, the government is eliciting and
8 there has been no objection to that, very graphic
9 evidence, and they're going to continue to do so, no
10 doubt, with this witness, which will not be
11 objectionable, I mean, just on that, of the gruesome --

12 THE COURT: Is this related now to the
13 photographs?

14 MR. ZIMMERMAN: What?

15 THE COURT: Is your statement now relating
16 to the photographs? I'm about to rule on photographs.

17 MR. ZIMMERMAN: It relates to the
18 photographs.

19 THE COURT: All right. Go ahead.

20 MR. ZIMMERMAN: It is that in light of all
21 the evidence that the government has elicited, and that
22 we anticipate that they will be eliciting, and the fact
23 that there were these murders and decapitations -- let's
24 go specifically to Gerson, because that's the 90
25 series -- that these photos have zero real relevance or

1 probative value. That is, they're establishing it
2 through other evidence. It's not being contested by the
3 defense.

4 The only purpose of the photos -- and we all
5 know this, we know this, when we step back and look at
6 this -- and, playing with legalism -- the purpose of
7 these is to shock the jury. The purpose of these
8 photos --

9 THE COURT: Let's --

10 MR. ZIMMERMAN: -- is to be horrified.

11 THE COURT: Let's be real here.

12 MR. ZIMMERMAN: Okay.

13 THE COURT: If these bodies were buried in
14 the ground like this, and somebody was murdered in the
15 park, it is evidence of what the crime was. It is not
16 sanitized. It is not manufactured. It is what
17 happened. The jury should see it.

18 So, unless you have something further to
19 say, I'm prepared to rule -- I'm going to let the
20 government respond, but I'm prepared to rule.

21 If there something else that hasn't been
22 said, go ahead. I'm listening.

23 MR. ZIMMERMAN: Just this, Judge, that as a
24 legal basis, the whole purpose -- one of the main
25 purposes of 403 is -- is essentially to keep out

1 evidence that -- that is -- may have some arguable
2 relevance.

3 But, it's unfairly prejudicial, outweighs
4 the probative value. That is, since the fact that the
5 murders occurred, even the fact that they were gruesome
6 murders and exactly what occurred, it has come in and
7 will continue to come in through other evidence.

8 This -- this evidence only service to
9 unfairly prejudice the jury, to put aside what -- our
10 identity defenses, to put aside what our racketeering --
11 it wasn't racketeering activity defenses. And to have
12 the jury look at these and go back and say, "That is so
13 disgusting and horrifying," that it just clouds the
14 judgment, and that's just unfair to the defendants.

15 THE COURT: Thank you, Mr. Zimmerman.

16 MR. ZIMMERMAN: Thank you, Judge.

17 THE COURT: Ms. Martinez, anything further?

18 MS. MARTELL: Your Honor, if we could add
19 one more thing. We would also add --

20 THE COURT: Ms. Martell, I don't think you
21 can see which way this train is headed.

22 MS. MARTELL: No, I do.

23 THE COURT: You do? Okay.

24 Well, then, let me do this, because I'm not
25 going to spend three hours on photographs of a crime

1 scene. All right? They come in in every single case.
2 The fact that this one is gruesome has nothing to do
3 with -- I don't make the facts. Neither do you. These
4 are the facts.

5 The photographs -- Ms. Martinez, anything
6 further you want to say about series 87 and 90?

7 MS. MARTINEZ: No, Your Honor. I would just
8 state for the record --

9 THE COURT: Are there others that you plan
10 to --

11 MS. MARTINEZ: -- the 90 series does show
12 the injuries that have been described in testimony and
13 that will further be described in testimony.

14 We submit that they are highly relevant,
15 that although certainly they're prejudicial, so is the
16 rest of the government's case to these defendants. The
17 question is whether it's unfairly prejudicial. And we
18 submit that it certainly is not.

19 Your Honor, I'll add that we have scores of
20 pictures like this. We don't intend to introduce 20 or
21 30 --

22 THE COURT: Which ones --

23 MS. MARTINEZ: -- pictures of this victim;
24 the ones that we marked as exhibits.

25 The defense has been provided with all of

1 the pictures that were taken of these bodies. We have
2 selected ones, only ones that are necessary to show the
3 specific wounds that are described. We have actually
4 been very precise in what we picked. We're not going to
5 overwhelm the jury with 30 different pictures of the
6 body, pictures that show the severed head, that show the
7 stab wounds, that show the neck where the head was
8 severed.

9 These are highly relevant and they show the
10 jury what the testimony describes. That's necessary for
11 corroboration and the jury should get to see it.

12 THE COURT: Now, I'm looking at the 87
13 series.

14 MS. MARTINEZ: Yes, Your Honor.

15 THE COURT: And then there's 88. They
16 haven't objected to 88, but I think they have the same
17 objections. But I understand why you're offering them.

18 MS. MARTINEZ: Yes, Your Honor.

19 THE COURT: 89, it looks like more
20 excavation photographs. 90, we just talked about.

21 MS. MARTINEZ: If Your Honor would like, I
22 can put for the record what these different series are,
23 just so Your Honor is --

24 THE COURT: That would save me time.
25 Please.

1 MS. MARTINEZ: Okay. So if we start with
2 87 -- and the 87 series was the series that this witness
3 was asked to identify -- that's the site where the body
4 of Nelson Omar Quintanilla Trujillo was excavated. So
5 this is the -- the site survey and the excavation of
6 that body relates directly to Count 4 and Count 5 of the
7 indictment.

8 Turning to the 88 series, the 88 series also
9 relates to Nelson Omar Quintanilla Trujillo. That's
10 pictures taken at the medical examiner's office showing
11 the body and the wounds at the medical examiner's
12 office. Again, that relates to Count 4 and Count 5.

13 Turning to the 89 -- sorry -- yes, the 89
14 series, Your Honor, that's back in the park. That's the
15 excavation of the second site.

16 And just for -- this won't -- I don't think
17 this will mean anything to Your Honor or to the
18 witness's testimony, but for defense counsels' purposes,
19 there was ample discovery on this, and the sites were
20 given different numbers. So, this is actually site
21 four, I believe. Because they looked at different sites
22 in the park.

23 But in any event, this is the site -- these
24 pictures show the excavation of the second murder
25 victim, Gerson Adoni Martinez Aguilar. That relates to

1 Count 6.

2 And then turning to the 90 series, which is
3 where we started, that, those are pictures taken at the
4 medical examiner's office of the second murder victim,
5 Gerson Adoni Martinez Aguilar, again, relating to Count
6 6.

7 THE COURT: This is number -- section 90?

8 MS. MARTINEZ: Yes, Your Honor.

9 THE COURT: All right.

10 MS. MARTINEZ: And for the Court's
11 convenience, on the exhibit list, which we certainly
12 don't intend the jury to have, but for Your Honor's
13 convenience, those series are described based on which
14 body it is, as well, which victim.

15 THE COURT: All right. Okay.

16 The record should reflect that the defense
17 has objected to --

18 MS. MARTINEZ: Your Honor, may I just add?

19 THE COURT: Yes.

20 MS. MARTINEZ: There is -- this is -- of
21 course, there's three murders in this case, and there
22 are pictures, as well, related to the third murder. I
23 don't know -- no one has objected to those, but if Your
24 Honor wants to take up all pictures at the same time --

25 THE COURT: Is this witness going to testify

1 about all?

2 MS. MARTINEZ: No, Your Honor.

3 THE COURT: Well, I think we should see
4 those when that witness comes up.

5 MS. MARTINEZ: Just wanted to raise it so
6 that Your Honor is not surprised when there are more
7 pictures of another victim.

8 THE COURT: Okay. Thank you.

9 MS. MARTINEZ: Thank you, Your Honor.

10 THE COURT: The record should reflect this
11 matter is before the Court on the defense's objection of
12 photographs of excavation of grave sites and bodies
13 retrieved from grave sites, that have been referred to
14 in testimony relating to Counts 4, 5 and 6 of the
15 indictment.

16 There has been testimony of recordings of
17 discussion of cutting off heads and stabbing and cutting
18 up legs to put a body into the ground.

19 And, these photographs show the area in
20 which the informant witness, Garcia, Junior, testified
21 that he went to the scene with one of the defendants,
22 and these areas were identified to him as where the
23 bodies were buried.

24 These photographs depict the decomposed
25 bodies and the state in which they were found by the FBI

1 in the excavation. And they are what they are; that is
2 to say, they are evidence that corroborates the charges
3 in Counts 4, 5, and 6, and they are highly relevant
4 under 401.

5 I do not think that from the standpoint of
6 403, that I should somehow sanitize the case or deprive
7 the jury of an opportunity to see just what happened to
8 these individuals. If they're depicted, as stated,
9 there's no objection to that. And, what they -- what
10 their bodies looked like when they were being removed
11 from the scene.

12 And nobody has stipulated that they agree
13 that they -- that a murder was committed. And I
14 understand why you wouldn't do that.

15 But it seems to me that under 403, these
16 photographs are no more gruesome than others that have
17 been admitted in murder trials in the past.

18 For those reasons, those exhibits will be
19 admitted.

20 We will now take a 15-minute break and then
21 we will come back and start the trial. Thank you.

22 (Court recessed at 11:30 a.m. and reconvened
23 at 11:46 a.m.)

24 THE COURT: You can bring our jury out.
25 And bring the witness back, please.

1 (Witness resumed stand.)

2 (Jury present.)

3 THE COURT: You may be seated.

4 All right, Counsel, you may proceed.

5 BY MS. MARTINEZ:

6 Q. Welcome back.

7 When we left off, we were on Government's
8 Exhibits 87-A through L, the pictures of the site
9 excavation; is that right?

10 A. That is correct.

11 MS. MARTINEZ: Your Honor, the government
12 moves into evidence Government's Exhibits 87-A through
13 L.

14 THE COURT: Received, over the objections.

15 MS. MARTINEZ: Your Honor, may we publish?

16 THE COURT: Yes.

17 BY MS. MARTINEZ:

18 Q. We'll go through these one by one. Let's start
19 with Government's Exhibit 87-A. And we're going to put
20 them up on the screen, so you can use the paper or the
21 screen, whatever is easiest for you from the stand
22 there.

23 What is Government's Exhibit 87-A?

24 A. It's actually an overall photograph that shows
25 the dirt halo, the primary and secondary depression, the

1 crime scene tape that we marked off, and the -- where we
2 set up the grid system or the Cartesian grid system to
3 take measurements.

4 Q. At the time that this picture was taken, had any
5 excavation begun?

6 A. No.

7 Q. I observe in the middle of the picture what looks
8 to be a hole. Do you see that?

9 A. Yes.

10 Q. Can you elaborate on what that is?

11 A. This is actually what we would consider a
12 secondary depression. It often results when there is
13 something buried and decomposes, or is changing, and the
14 earth slowly falls in. That is happening from beneath.
15 And on top sometimes it's a result of carnivore
16 activity.

17 Q. You mentioned the crime scene tape. Can you just
18 show the jury where that crime scene tape is?

19 A. Crime scene tape is all along the back side.

20 MS. MARTINEZ: Let the record reflect that
21 the witness has drawn a horizontal line towards the top
22 of this picture.

23 THE COURT: So noted.

24 BY MS. MARTINEZ:

25 Q. Below that line, I see what looks like string,

1 maybe green string. Do you see that?

2 A. There's one right here, goes here to here, and
3 then from here over to here.

4 Q. What is that string?

5 A. Those are -- actually we use a Cartesian grid
6 system to take all our measurements. Most people learn
7 in school, the X, Y and Z measurements, and those are
8 the lines that are drawn in order for us to take those
9 measurements throughout the excavation.

10 Q. What is the purpose of the Cartesian
11 measurements?

12 A. It's actually to document and basically to
13 recreate maps, exactly where the different -- like the
14 dirt halo and the primary and the secondary depression.
15 And then as we excavate, we can actually take depth
16 measurements, also, to be able to recreate the scene on
17 paper.

18 Q. After this picture, what were the first steps
19 taken?

20 A. There would be photography. This is the initial
21 mapping of taking the outline of the, again, the dirt
22 halo, the primary and the secondary depression. Then we
23 would actually start removing the dirt halo to try and
24 find the perimeters of the true grave.

25 Q. How would you remove the dirt?

1 A. We actually use small --

2 Q. How did you remove the dirt?

3 A. We actually use small hand trowels, or a small
4 masonry trowel, which is usually about two or three
5 inches long, in a methodical, slow method of basically
6 just scraping one -- or anywhere from a half to one inch
7 layers until you actually get down to the true ground.

8 And then, as you're removing the dirt it actually
9 goes in buckets and is taken to another site, where it's
10 actually sifted. So there's no actual digging. It's
11 actually scraping.

12 Q. What's the purpose of scraping rather than
13 digging?

14 A. To ensure that you don't compromise any evidence,
15 or compromise the integrity of the actual true grave.

16 Q. Please turn now, on the screen, to Government's
17 Exhibit 87-C. What does this picture show?

18 A. This actually is a close-up of what you saw
19 previously. However, the -- all of the leaf litter or
20 the, kind of the -- the debris, first layer of the
21 ground was actually removed. But you can actually see
22 the -- again, here's the secondary depression that I
23 discussed earlier.

24 You actually can start seeing the primary
25 depression or the outline of the grave, just from the

1 variation in color. You can also again see the two
2 lines for the Cartesian grid system.

3 MS. MARTINEZ: And, Your Honor, may the
4 record reflect that with respect to --

5 Well, let me ask you, so I make sure I don't
6 get it wrong.

7 BY MS. MARTINEZ:

8 Q. What was the first thing that you noted in this
9 picture?

10 A. The secondary depression.

11 Q. And can you just point to the secondary
12 depression again?

13 A. The secondary depression.

14 MS. MARTINEZ: Your Honor, may the record
15 reflect that the secondary depression has been
16 identified by this witness as the visible hole at the
17 center of the picture.

18 THE COURT: So noted.

19 BY MS. MARTINEZ:

20 Q. And the second thing that you noted, what is
21 that?

22 A. The primary depression. It's a little bit
23 difficult to see, but you can definitely see the
24 definitions of two colors of dirt that I discussed
25 earlier, where the darker dirt -- this is the true --

1 the dirt over here, and the dirt over here, and up in
2 these areas, that dark soil is a topsoil that I
3 discussed previously.

4 The lighter color of dirt that you see here and
5 all through this entire area is the lighter dirt that is
6 indicative of a clandestine burial where there is --
7 it's from a lower level of dirt that has now been
8 basically turned upside down.

9 MS. MARTINEZ: Your Honor, may the record
10 reflect that in talking about the lighter colored dirt,
11 she has indicated an area at the center of screen larger
12 than the visible hole.

13 THE COURT: So noted.

14 BY MS. MARTINEZ:

15 Q. In the hole there that you can see, there appear
16 to be -- well, let me ask you what they are -- but lines
17 that sort of go through the hole. What are those?

18 A. The -- like the little twigs and stuff that are
19 sticking out right here? Is that what you're talking
20 about?

21 Q. Yes.

22 A. Those are actually where -- since you've got a
23 very large tree and we're in a wooded area, the entire
24 network of the root system, basically, that are
25 basically coming off of this tree, which, I mean, they

1 look like lines, or almost like tentacles, coming out of
2 the earth.

3 Q. Let's turn now to Government's Exhibit 87-D.

4 MS. MARTINEZ: If we could flip that
5 90 degrees to the right.

6 BY MS. MARTINEZ:

7 Q. What does this picture show?

8 A. Again, it's actually after the, probably the
9 first two layers were removed. It shows the outline of
10 the primary depression, which is going to be this area
11 right here. And this is the true outline of the grave,
12 which has been preserved.

13 And, there's actually some large roots that
14 were -- we were able to tell, because you could see
15 shovel marks around the edge up on this end. When they
16 hit these roots they basically stopped and continued --
17 I mean, they weren't going to go any deeper, so they
18 continued to go deep starting right about here.

19 MS. MARTINEZ: Your Honor, may the record
20 reflect that when she --

21 THE COURT: Well, the photograph actually
22 shows the indentation.

23 MS. MARTINEZ: Thank you, Your Honor.

24 BY MS. MARTINEZ:

25 Q. Now, in the -- across the screen there's some

1 sort of string and some sort of device. What is that?

2 A. That is the same thing. It's the Cartesian grid
3 system we use in order to take our D measurement or
4 depth measurement. We actually attach a line level.
5 So, from our data point, which is basically zero, we're
6 able to attach the string using a line level, and then
7 use a plumb bob from any position to be able to take an
8 accurate depth measurement throughout the excavation.

9 Q. At the lower right-hand side, I see what looks
10 like more roots. Is that what we're looking at there?

11 A. That is correct. This is a major root right
12 here, which define one edge of grave as well.

13 Q. And the smaller roots, some of them look like
14 they're broken or cut. Is that a result of the
15 excavation?

16 A. No. We actually go to great lengths to make sure
17 that we do not alter any feature that we encounter.
18 Hence, the reason that we use small devices and
19 implements to excavate. And we never cut anything, for
20 that exact reason, we want to make sure that roots are
21 left in the condition, so, if need be, we can actually
22 try and match tools that were used or implements used to
23 cut them during the initial digging.

24 Q. Please go to Government's Exhibit 87-G. What
25 does this picture show?

1 A. Again, it's the same, same hole, a little bit
2 deeper. You can actually see all of the different
3 roots. These are large roots that actually have cut
4 from the initial, initial digging, with -- they actually
5 have very, very sharp edges. So you can tell that it
6 was a sharp object that cut them, be it a saw, a shovel,
7 or a large knife.

8 And also, you can start seeing large, large rocks
9 that were laid in a layer about two and a half to three
10 feet down.

11 Q. What's the significance of the rocks?

12 A. These rocks were not -- it's not a natural layer
13 in the earth in that general region. They were
14 obviously brought from another site and placed there.

15 Q. When you were at this site, in the immediate
16 area, did you observe any similar rocks?

17 A. There were no rocks like this, you know, in 20,
18 30 feet around the grave, looking on the ground surface.
19 However, they were -- they were very smooth, non-jagged
20 rocks, which were actually consistent with the ones that
21 were down in the creek bed.

22 Q. About how far away from the creek bed was this
23 site?

24 A. If it was straight down, it was probably maybe a
25 hundred feet. But it was very steep, so it was

1 probably -- I should say a hundred yards, I'm sorry.
2 It's more like anywhere from 150 to 200 yards, because
3 you kind of had to zigzag to get down. It's an
4 extremely steep embankment.

5 Q. Please go to Government's Exhibit 87-H. What
6 does this picture show?

7 Or let me ask you, is this the same grave?

8 A. Yes, it is.

9 Q. On the right-hand side, there's some sort of
10 measuring device. What is that?

11 A. It's another implement that we use that we're
12 trying to take general -- an estimate of -- we're
13 actually trying to get the depth of what rocks, the
14 layer of rocks were.

15 Q. Do you recall what the depth measurement was
16 here?

17 A. It was -- the rocks were all different sizes, but
18 they ranged -- it was right around three feet.

19 Q. How big were the rocks?

20 A. They ranged in sizes. They're fairly large. The
21 average size was probably about this big.

22 Q. Would you say that was, what, maybe 18 to 24
23 inches you were holding your hands apart?

24 A. Yes.

25 And then there were a couple very large ones,

1 that they were so large it actually took two of us to
2 lift them.

3 Q. Please go to 87-E. What does this picture show?

4 A. This is the photo -- the graph that was actually
5 taken right after the layer of rocks that was actually
6 removed. And immediately I was able to identify that
7 there -- they were human remains.

8 Q. How were you able to identify that?

9 A. The -- there's actually -- if you pay attention,
10 there's, right here, it's the left leg, and the right
11 leg is actually adjacent to it.

12 The -- the decomposition on this leg was very
13 extensive, and I was actually able to feel around --
14 it's not working. There's a -- to the top area, where
15 it's -- there it is. I was able to feel around and
16 palpate that general area and identify it as the lower
17 end of the human femur and the top end of the human
18 tibia.

19 MS. MARTINEZ: Your Honor, may the record
20 reflect she has indicated areas on the left side of the
21 hole visible on the picture.

22 THE COURT: So noted.

23 BY MS. MARTINEZ:

24 Q. What steps were taken after the excavation got to
25 this level?

1 A. As soon as we are able to confirm that it is
2 human remains, we are obligated to contact the medical
3 examiner office. And I actually talked to them, and
4 provided them the exact same information I had just told
5 you, and the reasoning that I believed that it was human
6 remains.

7 Q. How did the excavation proceed after that point?

8 A. Since it was very late in the day, I think it was
9 close to 6:00 o'clock, we -- an excavation like this,
10 and to make sure that we don't miss any evidence, it's
11 very critical that we have great light. And because it
12 was a wooded area, we were losing light quickly, we
13 decided it was a good time to actually take a break for
14 the evening and secure the site and come back the next
15 morning.

16 Q. What steps were taken to secure the site?

17 A. The photographs, final measurements were taken.
18 Photographs were taken. We actually brought in a large
19 sheet of plywood that was actually laid over the top.
20 And then there were two police officers that remained
21 with the site until we returned in the morning, to make
22 sure that it wasn't compromised in any way.

23 Q. What happened when you returned in the morning?

24 A. It's kind of the reverse. We removed the
25 plywood. Again we take photos and we take more

1 measurements, just to make sure there was no variation
2 from the previous evening, and then we progress with the
3 excavation.

4 Q. How did the excavation progress that next day?

5 A. Once you get to this level, you actually have to
6 slow down, because once we've reached the level of the
7 body, the levels actually have to get smaller and you
8 have to be a lot more methodical to make sure that we
9 don't, A, compromise the integrity and further damage
10 the human remains, and we want to make sure that we
11 don't miss any evidence as well. So it was pretty much
12 an entire day excavating.

13 Q. Please turn to Government's Exhibit 87-K. What
14 does this picture show?

15 A. This is actually further down. We have almost
16 reached the -- or we've gotten to a point where it's
17 called pedestaling, where you've gotten down to the body
18 and we're exposing as much as we can, using -- we're now
19 using pottery tools, small dowel tools and paint
20 brushes, basically, to clean up all the dirt that we
21 possibly can, and slowly let the -- the remains emerge
22 without compromising their positioning whatsoever.

23 Q. Are you able to tell the position of the body in
24 this photograph?

25 A. Yes. Again, this is the same -- this is the same

1 left leg, bent right here. This is the right leg
2 sitting right next to it. The hips or the pelvic girdle
3 would be right through here. This would be the main
4 torso. And the head is going to be up in this region.

5 MS. MARTINEZ: Your Honor, may the record
6 reflect that the witness has indicated that the legs are
7 on the right side of the hole, visible, and the head is
8 on the left side.

9 THE COURT: So noted. But the photograph
10 shows what it shows. Next question.

11 BY MS. MARTINEZ:

12 Q. What did you do at this point?

13 A. Again, you just continue the excavation until
14 there's no -- we go down around all sides of the
15 remains, to try and get -- basically break the body free
16 of anything that's holding it in the grave.

17 Q. Please turn to Government's Exhibit 87-J. What
18 does this picture show?

19 A. This is going to be one of the last photographs
20 that was probably taken before the individual was
21 removed from the grave. It's in a position -- or we
22 call it pedestaling, where we've remove as much as dirt
23 as possible and exposed everything.

24 After this, we would take photographs, final
25 measurements of all the major joints, to be able to

1 measure his exact positioning within the grave.

2 Q. What was the position of the body in the grave?

3 A. As I said before, it was a semi-fetal position.
4 Again, you've got your head on this end, and then these
5 are the two knees.

6 Q. Please turn to Government's Exhibit 87-I. What's
7 happening in this picture?

8 A. Similar to what we did with the rocks, we were
9 taking final depth measurements on the -- of the
10 individual.

11 Q. Do you recall the final depth measurement?

12 A. The top of his knees were like, just below three
13 feet. His hips were around four and a half feet deep.

14 Q. Please turn to Government's Exhibit 87-F. What
15 does this picture show?

16 A. After the body was removed, we took -- we
17 actually go in and remove and try and find the true
18 bottom of the grave, to make sure that there's no human
19 remains left, and there's no evidence remaining at the
20 base of the grave. So once we take that out, sift it,
21 we take final measurement of the true, true bottom.

22 Q. How was the body removed?

23 A. There was actually two of us that had to work in
24 the grave. And what we ended up doing is pulling up his
25 upper body and sliding a sheet underneath of him,

1 similar to like a sling. And then we did the same thing
2 with the lower portion of the body and slid a second
3 sheet underneath, and then got out of the grave and
4 basically pulled him up in a sling-like fashion.

5 Q. What was the measurement of the true depth of the
6 grave, if you recall?

7 A. It was about four and a half -- it ranged,
8 obviously, from four and a half almost close to five
9 feet deep at its deepest.

10 Q. Please turn to Government's Exhibit 87-B. What
11 is this?

12 A. This is actually a picture of all the rocks that
13 was -- were taken out of the grave. The reason that we
14 photographed them is because to show how many were
15 there. Also, we made sure that when we pulled them out,
16 when we set them, we set them upside down, because they
17 were in direct contact with the human remains, and we
18 wanted to make sure that there was no evidence that was
19 left behind.

20 Q. One of the rocks on the right side appears to me
21 to be bigger than the others. Do you recall where that
22 rock was located?

23 A. This large rock was basically in the stomach
24 area. And that was the one that took two, and almost
25 three people for us to lift it out.

1 Q. Please turn to Government's Exhibit 87-L. What
2 does this picture show?

3 A. It's the human remains as we placed them in the
4 body bag. And you can still see the two sheets laying
5 underneath of him that we used as the sling to pull him
6 out.

7 Q. And what is the material on top of the body?

8 A. Those were all materials that he was -- that were
9 encased that -- it was manmade material. Again, I --
10 it's not my position to state what it is. That falls
11 under the realm of the medical examiner. But it was --
12 it was materials that he was -- that was attached to him
13 and, therefore, we kept its -- maintained its integrity
14 as we pulled him out of the grave.

15 Q. When was the second body excavated?

16 A. The following day, so, it would have been on the
17 20th.

18 Q. All right. And, if we could go back to that
19 aerial photograph, Government's Exhibit 96-B,
20 approximately where was the second excavation site.

21 A. It was on the other side of the creek bed. So,
22 if the first body was on this side, the second body
23 would have been on the hill side, on this side.

24 Q. All right. And just for the record, you're
25 saying the first body is -- the way this picture is

1 depicted, the first body is on the right side and the
2 second body was on the left side?

3 A. That is correct.

4 Q. How far apart were the two sites, approximately?

5 A. You could -- you could see them. And again, they
6 were probably -- if you drew a straight line, probably
7 150, 200 yards. But the fact that you actually had to
8 walk in a zigzag motion, it took you 20 minutes to get
9 from one site to the other.

10 Q. And when you say "walk in a zigzag motion," what
11 are you referring to?

12 A. The, the terrain was so steep it would be
13 dangerous just to walk straight down. So the hiking
14 trails -- some of the trails that existed was almost
15 like a switchback path down.

16 Q. The second site, how far was that site from the
17 creek bed?

18 A. Probably 100, 150 feet.

19 Q. Please take a look at Government's Exhibits 89-A
20 through Q, inclusive. And feel free to remove them as
21 you did with the others.

22 Do you recognize these photographs?

23 A. I do.

24 Q. What do they show?

25 A. They're all consistent with the second grave that

1 we excavated.

2 MS. MARTINEZ: Your Honor, the government
3 move into evidence 89-A through Q, inclusive.

4 THE COURT: Received over objections.

5 BY MS. MARTINEZ:

6 Q. Let's start with Government's Exhibit 89-B. What
7 does this photo show?

8 A. It's actually the -- in the forefront is the
9 location of the site with, the ground debris is still
10 present, and you can actually see the creek bed in the
11 background, and the crime scene tape to the left.

12 Q. When you first arrived on the scene, what did you
13 observe?

14 A. Very similar to the first site. I was able to
15 see a dirt halo, bioturbation, the, the ground scatter,
16 the dirt scatter, and the primary and secondary
17 depressions.

18 Q. What were the first steps taken with respect to
19 this excavation?

20 A. The exact same as previously. We took initial
21 photography. We took initial measurements. Then we
22 cleared the ground debris and took measurements of the
23 dirt halo, removed the dirt halo, and took the
24 measurements of the grave outline.

25 Q. Please turn to Government's Exhibit 89-A. And

1 what does this show?

2 A. This is the -- again, it's showing the perimeter
3 that we've set up with crime scene tape, and we're
4 taking -- we have cleared the ground debris or the leaf
5 litter, and we are taking the -- setting up the
6 Cartesian grid system to take the grave measurements.

7 Q. 89-I. What does this photograph show?

8 A. It's a close-up of the primary depression or the
9 grave outline. Again, you can see the variation in soil
10 color, and -- that allows you to depict the outline of
11 the grave.

12 Q. Please turn to Government's Exhibit 89-J. What
13 does this photograph show?

14 A. It's very similar to the previous one, just a
15 different view, again showing the full outline of the
16 grave, and the soil color and the primary depression.

17 Q. What steps were taken during the excavation after
18 this point?

19 A. Again, you've got the -- once we've been able to
20 determine what the primary depression, we started
21 excavate that depression.

22 Q. How did the excavation proceed?

23 A. I was -- again, I was the team lead, and we very
24 methodically started removing layers using a small hand
25 trowel, and sifting the dirt as we went, looking for

1 evidence.

2 Q. Please look at Government's Exhibit 89-L. What
3 does this picture show?

4 A. Again, at a much -- almost less than a foot, foot
5 and a half down, we encountered another layer of large
6 rocks.

7 Q. Were there large rocks like these in the
8 immediate area of this site?

9 A. There was one that was actually right on top or
10 at the foot of the grave, but, there were none anywhere
11 else that we could see on the hill.

12 Q. Where were the closest rocks of this size that
13 you were able to observe in the general area?

14 A. Down in the creek bed.

15 Q. Please turn to Government's Exhibit 89-M. What
16 does this picture show?

17 A. This is actually a large -- as we excavated, we
18 quickly encountered a very large rock on one end of the
19 grave, and we realized it's -- actually it was a
20 boulder, which the individuals that actually dug the
21 hole probably encountered the same thing, where they had
22 actually started with a hole that was this large, and
23 this entire portion here is a boulder that is part of
24 the earth. So once they hit that, they basically moved
25 forward before they continued to go downward, taking

1 measurements of the depth of that boulder.

2 Q. What's the dark area in the bottom right-hand of
3 the screen?

4 A. This is actually part of the human remains.

5 Q. What are the dark dots on top of that?

6 A. Those would probably be flies, maggots and
7 beetles.

8 Q. Please turn to Government's Exhibit 89-P. What
9 does this show?

10 A. This is after we have removed all the rocks, and
11 we took -- and were able to definitively say that it was
12 human remains, they took an overall photo of the
13 entire -- what now is the primary depression or the
14 grave circumference.

15 Q. How were you able to determine at this stage
16 definitively that this was human remains?

17 A. Again, it was palpation of the leg bones in this
18 general area, or this general area, that it was, in
19 fact, human remains.

20 Q. What was the approximate depth of the human
21 remains in this grave?

22 A. It was -- it was actually very shallow. It was
23 less than two feet.

24 Q. To the right-hand side of that picture, there
25 appears to be some sort of black material. What is

1 that?

2 A. It's not really -- the black material is actually
3 volatile fatty acids that are a result of decomposition
4 of everything in the human body, kind of turns
5 everything a really dark color. It's often confused as
6 possibly being burned. It isn't. It's actually the
7 volatile fatty acids.

8 Q. Please turn to Government's Exhibit 89-P --
9 pardon me -- 89-N. What does this show?

10 A. This is actually after we've pedestaled the body,
11 as I explained previously, and it shows the orientation
12 of the individual in the grave.

13 Q. What was the orientation?

14 A. Initially, we thought since the legs were bent
15 right here, we actually thought that he was face down.
16 Once we were able to excavate the shoulders and the
17 elbow, I could actually tell that he's in fact, face up,
18 and therefore his legs were broken at some point or
19 forced forward.

20 Q. Where is his head?

21 A. Um, at this point we had not actually located his
22 head. His shoulders are right here. And, this is
23 actually the big rock that I was telling you about
24 before.

25 Q. Please turn to Government's Exhibit 89-O.

1 MS. MARTINEZ: Court's indulgence, Your
2 Honor.

3 Just a moment, Your Honor. Technical
4 difficulties.

5 BY MS. MARTINEZ:

6 Q. What does Government's Exhibit 89-0 show?

7 A. It's actually a close-up of the individual in the
8 grave. This is actually a very large rock that was
9 placed on his chest and his hands, replaced over him.
10 And at this point, I was able to palpate the neck region
11 determine that his head was not attached.

12 Q. Please turn to Government's Exhibit 89-K. What
13 does this picture show?

14 A. This was another overall picture showing all the
15 rocks that we actually pulled out of the grave during
16 our excavation. The ones on the left are the ones
17 that -- these here are the ones that were in direct
18 contact with the body. Again, you can see that same
19 black material that's consistent with the previous
20 photos.

21 Q. Please turn to Government's Exhibit 89-Q. What
22 does this photograph show?

23 A. It's actually the remains. Again, we used the
24 exact same method, using a sheet or a sling to remove
25 the individual and placed him in a body bag, and at

1 that -- at which time we were able to locate the head,
2 or the calvarium, which was underneath the body.

3 So we just put it -- we orientated it in the
4 correct position. It was a final photograph taken
5 before the medical examiner took custody of the body.

6 Q. Where is the head in this picture?

7 A. It's actually in a, some type of material. I did
8 not actually remove it myself. I could not tell you
9 what the material was.

10 Q. Was it manmade material?

11 A. Yes.

12 MS. MARTINEZ: No further questions, Your
13 Honor.

14 MR. JENKINS: Yes, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. JENKINS:

17 Q. Good morning, Special Agent.

18 A. Good morning.

19 Q. Special Agent, you participated in the excavation
20 of both bodies, correct?

21 A. That is correct.

22 Q. Did you participate in the collection of any
23 other physical evidence at the scene?

24 A. No, I did not.

25 MR. JENKINS: No further questions, Your

1 Honor.

2 THE COURT: Any redirect?

3 MS. MARTINEZ: No, Your Honor. May the
4 witness be excused?

5 THE COURT: You're excused. Thank you for
6 coming.

7 THE WITNESS: Thank you.

8 (Thereupon, the witness withdrew from the
9 stand.)

10 MS. MARTINEZ: Your Honor, the government
11 calls Juan Ramos.

12 (Witness sworn.)

13 THE WITNESS: I do.

14 THE COURT: You may proceed.

15 THEREUPON, JUAN RAMOS, having been duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. MARTINEZ:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. Please state and spell your full name for the
22 record.

23 A. It's Juan Ramos. J-u-a-n, R-a-m-o-s.

24 Q. Mr. Ramos, where do you work?

25 A. The FBI.

1 Q. What do you for the FBI?

2 A. I'm a language specialist.

3 Q. What is a language specialist?

4 A. I provide language support during FBI
5 investigations.

6 Q. How long have you been a language specialist for
7 the FBI?

8 A. Twenty-four years.

9 Q. What languages do you provide support for to the
10 FBI?

11 A. Spanish.

12 Q. What languages do you speak?

13 A. Spanish and English.

14 Q. How long have you spoken Spanish?

15 A. Fifty-three years.

16 Q. Where did you learn Spanish?

17 A. I'm a native speaker.

18 Q. How long have you spoken English?

19 A. Most of my life. I learned it in school as a
20 second language.

21 Q. When you were hired by the FBI, were you required
22 to take any language proficiency exams?

23 A. Yes.

24 Q. And were you -- did you -- based on those exams,
25 did you successfully qualify to be a language

1 specialist?

2 A. Yes, I did.

3 Q. What are your duties as a language specialist?

4 A. I translate a variety of materials, audio, and
5 documents from English to Spanish, and Spanish into
6 English.

7 Q. Let's start with audio. What kind of audio do
8 you translate?

9 A. Um, anywhere from monitoring live Title III
10 investigations, to body wires and consensual telephone
11 conversations, for example.

12 Q. When you mentioned Title III investigations, what
13 is that?

14 A. That is live monitoring of electronic
15 communications by court order.

16 Q. And when you're monitoring these electronic
17 communications, what are your duties?

18 A. To listen to the conversation and make a synopsis
19 of the conversation.

20 Q. You also mentioned body wires. What is your duty
21 with respect to body wires?

22 A. Um, that's also a type of audio that I'm tasked
23 with translating, sometimes summarizing, sometimes doing
24 a verbatim translation of the body wire.

25 Q. In your 24 years of experience with the FBI in

1 translating Spanish, what countries have the Spanish
2 speakers been from?

3 A. A variety of countries, from the Caribbean,
4 Mexico, Central America, Dominican Republic,
5 Puerto Rico.

6 Q. Focusing particularly on Central America, what
7 experience do you have translating people speaking
8 Spanish from Central America?

9 A. I have experience with Spanish from Honduras and
10 from El Salvador.

11 Q. Based on your experience, would you agree that
12 Spanish speakers from different Spanish speaking
13 countries have different manners of speaking?

14 A. Yes.

15 Q. How long have you personally been translating
16 persons from Central America, particularly El Salvador?

17 A. I would say most of my career.

18 Q. And with what dialects of Spanish are you
19 familiar?

20 A. With the dialects from the Caribbean, Puerto
21 Rican Spanish, Dominican, Mexican Spanish, Honduran
22 Spanish, from El Salvador.

23 Q. You mentioned before summaries and verbatim
24 translation. Let's start with summaries. What are
25 summaries?

1 A. It's just basically listening to a whole
2 conversation and providing a synopsis of the most
3 important parts of that conversation.

4 Q. Are there times when you also translate
5 conversations and prepare the full translation?

6 A. Yes. That, it's called a verbatim translation.

7 Q. What steps do you take when you're assigned that
8 task?

9 A. Well, the very first step that I take is I
10 identify the speaker or the author, the message, and the
11 audience.

12 Q. What's the purpose of identifying the -- what's
13 the purpose of those steps?

14 A. Well, the -- basically, I mean, the more you know
15 about the speaker, you know, you could -- you could
16 immediately be able to tell the nationality, the variety
17 or regional kind of Spanish the person is speaking.

18 With the message, identifying the message is the
19 content of the conversation. It could be a conversation
20 about narcotics or mortgage fraud, you know. So you
21 identify what you're translating.

22 And the audience, of course, is who is going to
23 be reading these translations.

24 Q. During your experience with the FBI, have you had
25 any experience translating on gang related cases?

1 A. Yes, I have.

2 Q. How much experience do you have translating on
3 gang related cases?

4 A. Most of my career, about 24 years.

5 Q. Continuing with the steps when you're preparing a
6 full translation, after you have identified those
7 features that you mentioned, what's the next step that
8 you take?

9 A. I become familiar with the task, I mean, whether
10 it's a document, we're talking about verbatim
11 translations of audio. I would begin by becoming very
12 familiar with what I'm about to translate.

13 So, I may listen to the full audio several times
14 before I translate the first word of that transcript,
15 you know, five, six, seven, maybe ten times, before I
16 even begin to translate.

17 Q. What's the purpose of listening to it before you
18 begin to translate?

19 A. Becoming familiar, and preparing a strategy for
20 the product I'm about to start working on.

21 Q. Once you actually begin to translate, how do you
22 go about doing that?

23 A. Um, the mechanics, I use a computer with a
24 digital media player that allows me to use a foot pedal
25 to manipulate the recording. I use headphones, and

1 Microsoft Word to produce the transcript.

2 Q. What's the purpose of the foot pedal?

3 A. So that I can type as I'm listening to the
4 recording. I can, you know, play, pause, fast-forward
5 and rewind.

6 Q. Once you begin this translation process, how do
7 you proceed?

8 A. I -- you know, sometimes I have to listen to the
9 same section, you know, just to make sure that there's
10 no background noises, that there's -- that I'm familiar
11 with the -- with the terms that are being used, that
12 there are no -- that I find specific equivalency for
13 certain things, because there's -- sometimes there are
14 no lexical or direct translations for words from Spanish
15 into English, or from one variety of Spanish into
16 English. There might -- you know, you may have the same
17 term in -- in Spanish, two different countries, that
18 mean two different things.

19 Q. Let's focus on that in particular. You said you
20 have experience on gang cases?

21 A. Yes, I do.

22 Q. Have you had experience on gang cases involving
23 MS-13?

24 A. Yes.

25 Q. And, in your experience, do individuals

1 associated with MS-13 speak Spanish in a particular kind
2 of way?

3 A. Well, yes. There's Spanish, you know, basic
4 Spanish, and there's what, you know, most people will
5 call slang or *caliche*, which is, you know, slang from El
6 Salvador; and also, you know, slang which is
7 specifically for that, you know, community, for gang
8 related Spanish, or *caliche*.

9 Q. How have you educated yourself about that type of
10 slang and dialect?

11 A. Over the years, you know, by talking to experts,
12 you know, subject matter experts, and by researching
13 myself, reading scholarly papers about, about the
14 subject matter, and by many, many hours of -- hundreds,
15 maybe thousands of hours of listening to conversations.

16 Q. Continuing to your translation product of audio,
17 of an audio product, you said that you use a foot pedal
18 and you begin actually typing in Microsoft Word; is that
19 right?

20 A. Yes.

21 Q. Now, that foot pedal, does it alter the recording
22 in any way?

23 A. Oh, no. It's just simply the -- the way that you
24 would use a regular recorder, you use your fingers to
25 fast-forward, rewind.

1 Q. While you're actually translating, using and
2 typing in Microsoft Word, approximately how many times,
3 on average, do you listen to the recording?

4 A. To give you an average, it would -- it would be
5 fair to say that it would take about an hour of work, of
6 translation work, to produce -- to go over one minute of
7 audio.

8 Q. Once you've prepared the full translation, what
9 do you do with it?

10 A. I submit it to my supervisor.

11 Q. What's the purpose of submitting it?

12 A. That the supervisor routes that translation, that
13 product, to whomever the person is that it's supposed to
14 be routed to.

15 Q. Is there a review process in place?

16 A. Yes, there is.

17 Q. Are you ever an individual who reviews other
18 linguists' written product?

19 A. Yes, I am.

20 Q. Switching gears for a moment to an instance where
21 you're the reviewer, what steps do you take to review a
22 full transcript prepared by another linguist?

23 A. I listen to the full recording and I read the
24 full transcript.

25 Q. What's the purpose of that?

1 A. To make -- to make sure that the -- that the
2 translation is accurate.

3 Q. And once you've -- once you've reviewed that
4 translation, what do you do with it?

5 A. I resubmit it to my supervisor.

6 MS. MARTINEZ: Your Honor, at this point, we
7 move to qualify Mr. Ramos as an expert in translating
8 Spanish into English from audio equipment, including
9 particularly in the El Salvadoran dialect.

10 THE COURT: Based upon his experience and
11 testimony, I'll qualify him as an expert in
12 Spanish-English translation, with experience with the
13 El Salvadorian dialect, to prepare summaries and
14 transcripts.

15 BY MS. MARTINEZ:

16 Q. Mr. Ramos, I would like to direct your attention,
17 with the help of the court security officer, to
18 Government's Exhibits 18-A and 18-A-1. Do you have 18-A
19 in front of you there, the disc?

20 A. Yes, ma'am.

21 Q. What is Government's Exhibit 18-A?

22 A. 18-A is the disc containing the full recording.

23 Q. Is that a recording that you have previously
24 reviewed?

25 A. Yes, I have.

1 Q. Have you also reviewed it during your trial
2 preparation?

3 A. Yes, I did.

4 Q. How do you know that disc contains the recording
5 you reviewed?

6 A. Because after I reviewed the disc, I put my
7 initials on the disc.

8 Q. Please turn to Government's Exhibit 18-A-1. What
9 is Government's Exhibit 18-A-1?

10 A. 18-A-1 is a transcript of the contents of 18-A.

11 Q. Who prepared that transcript?

12 A. I did.

13 Q. Now, there are speakers identified in that
14 transcript; is that right?

15 A. Yes, there are.

16 Q. Was it your responsibility to identify the
17 speakers?

18 A. No.

19 Q. With the exception of the identity of the
20 speakers, can you attest to the written product in
21 18-A-1?

22 A. Yes, I can.

23 Q. And based on your experience, your knowledge, as
24 a linguist, is the translation in Government's
25 Exhibit 18-A-1 a true and accurate translation of the

1 audio in 18-A?

2 A. Yes, it is.

3 MS. MARTINEZ: Your Honor, to the extent
4 that it's not already in, the government moves in
5 Government's Exhibit 18-A and 18-A-1.

6 THE COURT: Received.

7 BY MS. MARTINEZ:

8 Q. Could you turn now to Government's Exhibit 18-B
9 and 18-B-1, as well as 18-C, 18-C-1, and 18-D and
10 18-D-1 -- and actually, I misspoke. There is no 18-C-1,
11 I believe. So, 18-B, 18-B-1, 18-C, 18-D, and 18-D-1.

12 Do you have those documents -- those exhibits
13 there?

14 A. Yes, I have.

15 Q. All right. 18-B, 18-C, and 18-D, what are those?

16 A. Those are excerpts from the disc containing the
17 full recording.

18 Q. Just to be clear, they are excerpts of
19 Government's Exhibit 18-A?

20 A. Yes, they are.

21 Q. Have you reviewed these excerpts?

22 A. Yes, I have.

23 Q. How do you know you've reviewed those particular
24 excerpts?

25 A. After reviewing every one of the excerpts, I put

1 my initials on the discs.

2 Q. If you could look at 18-B-1, and 18-D-1.

3 A. Okay.

4 Q. What are those?

5 A. Those are transcripts of the excerpts.

6 Q. Which excerpts?

7 A. 18-A -- I mean, 18-B and 18-D.

8 Q. Did you review those excerpted transcripts when
9 you reviewed the excerpt of the audio?

10 A. Yes, I did.

11 Q. And, do those transcripts correspond with the
12 audio?

13 A. Yes, they do.

14 Q. Are they true and accurate translations of the
15 audio, to the best of your abilities as a linguist?

16 A. Yes, they are.

17 MS. MARTINEZ: No further questions, Your
18 Honor -- oh, actually, the government moves in, to the
19 extent they're not in, Government's Exhibits 18-B,
20 18-B-1, 18-C, 18-D, and 18-D-1, Your Honor.

21 No further questions.

22 THE COURT: 18-B, bravo, 18-B, bravo, 1,
23 18-C, 18-D, David, 18-D-1, received.

24 MS. MARTINEZ: Thank you, Your Honor.

25 THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. LEIVA:

Q. Good afternoon, Mr. Ramos.

A. Good afternoon, sir.

Q. Just a couple quick questions for you.

A. Okay.

Q. All right. You asked -- you were asked about your Spanish proficiency, I believe, and you said that you were a native speaker?

A. Yes, I am.

Q. Okay. What do you mean by that?

A. I was born in Puerto Rico, and my first language is Spanish.

Q. Okay. All right. You testified that you are a language specialist, correct?

A. Yes, sir.

Q. And that you took a test or an exam to qualify as a language specialist?

A. Yes, sir.

Q. All right. And, I'm assuming that a language specialist is different from a contract language monitor?

A. Yes, it is.

Q. All right. And, it's different in what sense?

That you have a higher, let's say -- let me just

1 use this term -- you have a higher level than a contract
2 language monitor?

3 A. I don't know that. I don't know how that
4 decision by my employer is made. I -- I cannot answer
5 that.

6 Q. All right. Do you work around contract language
7 monitors?

8 A. Sometimes I do.

9 Q. Okay. And, would you agree with me there are
10 certain duties that you can perform that a contract
11 language monitor cannot perform?

12 A. I --

13 Q. You've been with the bureau about 20-something
14 years, have you not?

15 A. Twenty-four years.

16 Q. Twenty-four years.

17 And, correct me if I'm wrong, but I'm assuming
18 that in those 24 years you've worked next to contract
19 language monitors.

20 A. Yes. And they perform the same duties that I
21 perform.

22 Q. All right. So, what's the distinction, then?

23 Why have the distinction of a language specialist
24 and a contract language monitor, if you guys do the same
25 thing?

1 A. Um, I'm a full-time employee, and they're
2 contractors. But, I mean, I'm not -- I mean, that's
3 for the person that does the hiring to answer. I
4 don't --

5 Q. So I guess the short answer is, you don't know?

6 A. I don't know, sir.

7 Q. I appreciate that. Thank you.

8 You also said something interesting, that, you
9 said you talked to experts. When you said you talked to
10 experts, were you referring to experts in Salvadoran
11 gang slang, or were you just referring to experts in
12 general, Spanish language?

13 A. In general, but I have, yes.

14 Q. Okay, in general.

15 So, you have not consulted with any experts
16 regarding Salvadoran -- first let's start with
17 Salvadoran slang.

18 A. In 24 years?

19 Q. Yes.

20 A. Of course. I mean, sometimes I have worked with
21 people that are -- who are experts on different types
22 of -- of slang. In this case, you're mentioning, you
23 know, Salvadorian slang.

24 Q. Okay. When was the last time that you consulted
25 with an expert on Salvadoran slang?

1 A. We're talking many years ago.

2 Q. Ten, fifteen years ago?

3 A. Maybe, during, you know -- yes. I mean --

4 Q. That was -- I'm sorry.

5 A. Yes. I mean, it's -- you're talking that I work
6 with somebody considered an expert, I mean, in a
7 particular slang, that's what you're asking?

8 Q. I'm asking when was the last time that you worked
9 with an -- or you consulted with an expert concerning
10 Salvadoran gang slang?

11 A. A long time ago.

12 Q. About 10, 15 years?

13 A. You're saying 10, 15 years, but for me, I mean,
14 it's just a long time ago.

15 Q. That's what I'm asking you. A long time for me
16 could be something different than --

17 A. Exactly.

18 Q. -- a long time for you. That's why I'm giving
19 you the opportunity to tell me what a long time means.

20 A. You're asking me to guess. Maybe 15 years ago,
21 10, 15 years ago.

22 Q. And, you would agree with me, based on your
23 experience in dealing with MS-13 cases, that Salvadoran
24 gang slang, particularly MS-13 slang, is constantly
25 changing?

1 A. Yes, sir.

2 Q. All right. And it's constantly changing to avoid
3 detection from law enforcement?

4 A. Yes, sir.

5 Q. Another interesting point that you brought up,
6 you said you reviewed scholarly papers?

7 A. Yes.

8 Q. The scholarly papers that you reviewed, was it
9 just on the issue of -- I'm sorry -- just on the topic
10 of translations?

11 A. Um -- well, not necessarily. Sometimes when I'm,
12 when I'm preparing to do -- prepare a translation, and
13 it's from an area that I don't know, there is, you know,
14 somebody somewhere did a -- a Ph.D. dissertation on
15 Puerto Rican, you know, gang Spanish. So you have a lot
16 of research in one paper that prepares you, if you have
17 no experience, to, you know, to handle that task.

18 Q. I understand.

19 Let's focus on MS-13 gang slang. That's why I
20 became curious when I heard you say "scholarly papers."
21 Are you telling us that you reviewed a scholarly paper
22 that dealt with MS-13 gang slang?

23 A. Over -- over 24 years?

24 Q. Whatever time. You said that you --

25 A. Yes, at some point in time, yes, I probably

1 Google, you know, something to -- that brought me to a
2 paper on MS-13 gang slang, *caliche*, yes.

3 Q. Okay. So, just so I'm straight, you Googled
4 something, and you believe it led you to a paper that
5 dealt with Salvadoran gang -- or MS-13 gang slang?

6 A. That's not very hard to do, yes.

7 Q. I understand that. I understand there are a lot
8 of sites out there.

9 But you used the word "scholarly." That's why I
10 became interested.

11 A. The sources you use are very important, too.

12 Q. I understand. That's why I'm asking these
13 questions.

14 So, the sources that you found on the Internet,
15 were they just sources of glossaries of, of different
16 definitions of what people thought Salvadoran gang slang
17 was?

18 A. Not what people thought. I mean, I don't just,
19 you know, review one source. I review a variety of
20 sources. And, meaning, when you're looking through a
21 translation to produce a translation, the objective is
22 translating, meaning to meaning, as the author, as the
23 speaker intended, not as a definition you pull out of a
24 dictionary. Because it could mean, you know, one thing
25 for one person and another thing from another person.

1 You're --

2 Q. And I understand that, sir.

3 A. And you could be referring to semantic change and
4 things of that nature. So that's another aspect that
5 can be considered.

6 Q. I understand that, and I understand on the
7 Internet you can find a lot of those.

8 But the scholarly work that you're referring to,
9 do you recall who the author of that scholarly work was
10 or what the title of that scholarly work was?

11 A. No, sir.

12 Q. Okay. Now, when I asked you -- initially asked
13 you that question, you said -- you gave the example of
14 someone with a Ph.D. writing a paper on Puerto Rican
15 gang slang.

16 A. An example, yes.

17 Q. Okay. As an example.

18 So, this scholarly work that you're referring to,
19 was it your recollection that someone who had a Ph.D.
20 wrote a scholarly piece of work on Salvadoran -- or
21 MS-13 --

22 A. It could have been a dissertation of somebody,
23 yes.

24 Q. And do you recall how long ago it was that you
25 reviewed that scholarly work on MS-13 gang slang?

1 A. No, sir.

2 Q. You also said that as part of your process, you
3 identify the speakers, correct?

4 A. The speaker, the message and the audience.

5 Q. The message and the audience.

6 When you're going through that process, do you
7 speak to the agents to kind of get an idea -- the FBI
8 agents to kind of get an idea of what the kind of case
9 this is?

10 A. I get an assignment from my supervisor. There
11 might be a brief description of the task on the cover
12 page of my assignment.

13 Q. And, given that you -- your title is language
14 specialist, who is -- who are the individuals or the
15 person that reviews your work?

16 A. That's a process that I am not -- I mean, that's
17 my supervisor's job.

18 Q. And, what is the title that your supervisor
19 holds?

20 A. It is language services supervisor.

21 Q. As far as you know, has anyone who is a native --
22 who is Salvadoran ever reviewed your transcripts?

23 A. No, sir.

24 Q. Okay.

25 MR. LEIVA: That's all I have. Thank you,

1 sir.

2 THE WITNESS: Thank you.

3 MS. MARTINEZ: May the witness be excused,
4 Your Honor?

5 THE COURT: Yes.

6 (Thereupon, the witness withdrew from the
7 stand.)

8 MS. MARTINEZ: The government calls Juan
9 Carlos Marquez Ayala.

10 And Mr. Toliver, he's going to come from the
11 other side.

12 Your Honor, while we're waiting, there is a
13 short issue we should probably take up outside the
14 presence of the jury before the witness testifies.

15 THE COURT: All right.

16 Ladies and gentlemen, we'll have you step
17 out for a moment. It may be that we will send you to
18 lunch, but I'm not sure yet.

19 So, if I do, let me give you the instruction
20 now, which is do not discuss the case. Don't permit the
21 case to be discussed in your presence. Leave your notes
22 in the jury deliberation room.

23 And, I'll let you know in just a second if
24 I'm releasing you for lunch yet. Thank you.

25 (Jury not present.)

1 THE COURT: You may be seated.

2 MS. MARTINEZ: Your Honor, my agent reminded
3 me, fortunately, that this is one of the witnesses where
4 it would be prudent for us to speak with him right
5 before he testifies --

6 THE COURT: Oh, I see.

7 MS. MARTINEZ: -- to make sure he
8 understands that he should not name the defendant who
9 should not be named with respect to the first murder.

10 THE COURT: Well, why don't we do that after
11 lunch, then? Don't you think? I'm just kind of --

12 MS. MARTINEZ: That would be great.

13 THE COURT: I think if you take 15 minutes
14 now, we're going to be at the lunch hour. So we will
15 recess until 2:00 o'clock. And why don't you instruct
16 him right before he comes in and, you know.

17 MS. MARTINEZ: I'll have to consult with the
18 marshals about where we can instruct him.

19 THE COURT: Yes.

20 MS. MARTINEZ: It may be that we have to do
21 it --

22 THE COURT: That's fine.

23 MS. MARTINEZ: -- in the corner of the
24 courtroom, but we'll make those arrangements.

25 Do you want him to be instructed by 2:00, or

1 may we come back at 2:00 and instruct him at that time?

2 THE COURT: I think you should instruct him
3 right before 2:00, so right before he comes to the
4 courtroom, he will know.

5 MS. MARTINEZ: Okay. Just to be clear, Your
6 Honor, I was going to ask for about 20 minutes to talk
7 to him, just because the last thing I want is for
8 another problem, and another mistrial.

9 THE COURT: I understand.

10 MS. MARTINEZ: I want to make sure he is
11 well prepped.

12 THE COURT: What are you asking ask me to
13 do?

14 I was going to give you until 2:00 o'clock.
15 What would you like me to do?

16 MS. MARTINEZ: Just, you know, the hour goes
17 by very fast, Your Honor, with respect to getting food
18 and making sure we have everything in order. If,
19 perhaps, we could -- if we could start at 2:10, we will
20 be up here at 10 till 2:00, and we will get him prepped
21 during that time.

22 THE COURT: Recess to 2:10.

23 You can tell the jury.

24 (Court recessed at 12:47 p.m. and reconvened
25 at 2:13 p.m.)

1 (Jury not present.)

2 THE COURT: The government's ready now?

3 MS. MARTINEZ: We're ready, but may I
4 address the Court briefly?

5 THE COURT: Yes.

6 MS. MARTINEZ: Two things, Your Honor.

7 One, if we could bring the witness out
8 before the jury, I'd ask Your Honor to instruct this
9 witness that you understand that he may use a pseudonym
10 for a particular individual, and that that is with your
11 instruction and your blessing, that he understands he's
12 not being untruthful when he does so.

13 THE COURT: Okay.

14 MS. MARTINEZ: Second, Your Honor, in light
15 of the previous problems we've had with these
16 pseudonyms, I'd like to make a request and a suggestion,
17 if the -- if Your Honor is willing to --

18 THE COURT: All right.

19 MS. MARTINEZ: -- willing to grant this.

20 What I'd like to do is very lightly lead
21 this witness through the questions that are most likely
22 to elicit the information that no one in this courtroom
23 wants to actually hear on the record, so that we don't
24 have another motion for a mistrial, another reason for a
25 mistrial. I'll give an example of what I'm thinking.

1 Rather than saying, you know, "Who was
2 involved in the murder of Lagrima?" With laying
3 foundation about the witness's knowledge and that other
4 gang members were there, generally speaking, then to
5 say, "Were other gang members there? Were other gang
6 members we've already discussed today there?"

7 And then to just: Was so and so there? Was
8 so and so there? Was so and so there? Was so and so
9 there?

10 So that the list can be elicited from this
11 witness without an open-ended question, where he may
12 forget and not use the pseudonym.

13 We have prepped him thoroughly. I think he
14 understands, but this would be an additional precaution
15 that I propose.

16 THE COURT: I'm listening.

17 MS. AUSTIN: I would object, Your Honor, at
18 this point, that that's not lightly leading, and it's
19 completely implicating, name by name, possibly everybody
20 here in the courtroom.

21 He has to testify based on his recollection.
22 And I -- you know, I understand the concerns about the
23 pseudonyms, but that's just, I think, going too far in a
24 trial where these gentlemen's lives are at stake, to
25 name them by name on direct examination. And that is --

1 he's got to answer the question. It's one name, he
2 can't say now we're down to one.

3 THE COURT: Well, another way to do it is to
4 have each person, each defendant stand, and ask,
5 "Was that person involved," and have him identify him
6 from the stand. I could do that, too.

7 MS. AUSTIN: I don't think that's
8 appropriate, either, Your Honor, in all due. He has got
9 to answer questions about what he knows, and based on
10 his knowledge and his recollection of events, and not
11 have it fed to him.

12 At a trial, where -- I -- I'm sorry --

13 THE COURT: Is misidentification the issue
14 in this case, Ms. Austin?

15 MS. AUSTIN: This person hasn't identified
16 anybody, coming onto the stand.

17 THE COURT: Okay. All right.

18 Anyone else?

19 MR. JENKINS: Yes, Your Honor. Your Honor,
20 my concern for the Court -- I certainly understand the
21 thrust behind the Court's suggestion, but one of the
22 useful things we get out of cross-examination is testing
23 whether or not a witness will be consistent. That is, a
24 witness may say something on direct examination, but
25 then under the pressures of cross-examination may modify

1 their answer. And that's something that a jury or any
2 fact-finder should take into account in evaluating their
3 credibility.

4 So, while I appreciate and understand why
5 the Court suggested if the witness were just permitted
6 to have, for example, my client stand up, identify him
7 as being a participant in the activities charged in
8 Count 4, I still, even if that were done, would feel as
9 though that Mr. Torres is entitled on cross-examination
10 to reexamine that area and see whether or not the
11 witness, on cross-examination, would remain consistent.

12 THE COURT: I wouldn't prohibit anyone from
13 cross-examining about the in-court identification of
14 their client. It would just be avoiding mentioning
15 individuals who are not present.

16 MR. JENKINS: I certainly understand that,
17 and --

18 THE COURT: I'm trying to keep out the name
19 that I'm trying to keep out.

20 MR. JENKINS: Right. And I certainly
21 understand that concern. I think that's a legitimate
22 one. But as the Court and I have exchanged in some
23 dialogue early on in this case, while certainly as a
24 defense counsel I take pride in my ability to control
25 witnesses through leading questions, there are times,

1 strategically, where I believe that an open-ended
2 question would actually serve greater value.

3 Asking a witness for, example, "Well, tell
4 me who all was there," without necessarily leading them,
5 may, at times, actually be very valuable, because he may
6 list three names and leave out two that he may have
7 mentioned on direct examination. And, again, that's
8 another way.

9 If I tried to achieve the same purpose
10 through a leading series of questions, then I would
11 essentially be suggesting the answer to him for each
12 particular defendant, when I really want to test his
13 consistency and his recall based on the answers he gave
14 on direct.

15 So, I -- you know, while I understand what
16 the Court is trying to do, and I think it's, again,
17 legitimate, I think defense counsel should not be barred
18 from simply asking the -- asking the witness, "Well, you
19 answered questions about who all participated in Count
20 4."

21 "Yes, I did."

22 "Can you tell me who all participated in
23 Count 4?"

24 And, just leave it at that. I think that's
25 a legitimate question.

1 THE COURT: Well, they are legitimate
2 questions. I don't doubt that at all.

3 MS. MARTINEZ: Your Honor, two things.

4 First, with respect to Mr. Jenkins'
5 argument -- and I certainly -- I certainly think
6 Mr. Jenkins is a very skilled -- very skilled at
7 cross-examination, and there are different strategies to
8 take at different times.

9 I do want to put on the record, I have a
10 concern that if this witness or other witnesses are
11 repeatedly asked open-ended questions, who was there,
12 who was there, who was there, at some point we may see a
13 slip up.

14 And I would not like to see defense counsel
15 inviting a mistrial by encouraging a witness to list
16 over and over and over everyone who was there, and wait
17 for him to slip up and say the name he's not allowed to
18 say.

19 So, I do think that there needs to be, in
20 light of what's already happened, in light of Your
21 Honor's ruling, there needs to be a little bit of
22 direction from the Court about how far the parties can
23 go with respect to this.

24 With respect to the government's proposal
25 about leading, I do think it would be appropriate.

1 However, if Your Honor disagrees, and defense counsel
2 obviously disagrees, another way that we could handle
3 that is I could lead with respect to homeboy two.

4 For example, after laying appropriate
5 foundation, going through all of that, "Was homeboy two
6 there for the murder?"

7 "Yes" -- presumably the witness will say,
8 "Yes, he was."

9 "Other than homeboy two, who else was
10 there?"

11 That may remind him, encourage him, not to
12 say the name that he knows is associated with homeboy
13 two. That would be my backup suggestion, other than be
14 able to lead with the names.

15 Again, all I'm attempting to do here, I'm
16 confident that this witness, if there is no issue with
17 pseudonyms, will list the people who were involved. And
18 we've prepped him thoroughly on the pseudonym. We're
19 now only down to one. I think that he understands it.

20 But people get nervous on the stand. He has
21 never testified before. English isn't his first
22 language. He will be testifying through an interpreter.
23 And the stakes for him are high.

24 So, put on the record that we've seen a
25 slip-up before, and I'm attempting to do everything I

1 can, everything in the government's power, to avoid an
2 additional slip-up.

3 THE COURT: All right. Well, I like your
4 second suggestion of leading as to what homeboy two did,
5 and who is homeboy two. So I will permit you to do that
6 over the objections of defense counsel.

7 And, defense counsel, I'm not going to
8 restrict you on cross-examination of the witness. I
9 think you have the right to cross-examine. And I also
10 think that the government has the right to do what it's
11 done in the past in terms of in-court identification.

12 We'll do what we can. But if the result is
13 that cross-examination goes into a mistrial motion, it's
14 going to be denied. All right.

15 You can bring the jury out first.

16 (Jury present at 2:22 p.m.)

17 THE COURT: You may be seated.

18 MS. MARTINEZ: Your Honor, may I approach
19 briefly? May we approach briefly?

20 THE COURT: Yes. Sure.

21 (Thereupon, the following side-bar
22 conference was had:)

23 MS. MARTINEZ: My apologize, Your Honor. We
24 all got excited about the -- the issues of how the
25 direct was going to go; but the first request, whether

1 the witness could be instructed by Your Honor outside
2 the presence of the jury, I apologize, I think we all
3 forgot.

4 THE COURT: You did ask me that.

5 MS. MARTINEZ: And you brought the jury out.

6 THE COURT: I'll take the jury out.

7 (Thereupon, the side-bar conference was
8 concluded.)

9 THE COURT: Let the jury go back out a
10 minute.

11 (Jury not present.)

12 THE COURT: You can bring the witness out.

13 Is the pseudonym homeboy number two, *dos*?

14 Okay. Homeboy two.

15 (Witness sworn.)

16 THE WITNESS: I swear.

17 THE COURT: You can have a seat.

18 Can you tell us your name?

19 THE WITNESS: Juan Carlos Ayala Marquez.

20 THE COURT: Mr. Ayala Marquez, I've
21 instructed the government to have you refer to one
22 individual as homeboy two. You remember hearing that
23 term, homeboy two?

24 THE WITNESS: Yes.

25 THE COURT: Don't use that person's real

1 name. Just use homeboy two, on the Court's
2 instructions. I have a reason why I want that done.
3 So, even if you're asked questions, don't bring out the
4 name. Just say homeboy two. Okay?

5 THE WITNESS: Okay.

6 THE COURT: All right. Thank you.

7 MS. MARTINEZ: Your Honor, I need to address
8 you --

9 THE COURT: Yes.

10 MS. MARTINEZ: -- either from here or at the
11 bench on that issue.

12 THE COURT: Okay.

13 MS. MARTINEZ: On your instruction. The
14 issue is that that individual's name actually should be
15 used for everything other than the issue that we
16 discussed. So, I've instructed this witness on that,
17 but I want to make sure he doesn't think you're giving
18 him different instructions.

19 THE COURT: Ms. Martinez has given you the
20 right instruction. I have not.

21 Whatever Ms. Martinez told you earlier, you
22 follow that, okay? Okay? All right.

23 Okay. You got it?

24 MS. MARTINEZ: Yes.

25 THE COURT: All right. You can bring the

1 jury out. Thank you.

2 (Jury present.)

3 THE COURT: You may be seated.

4 All right, Counsel, you may proceed.

5 THEREUPON, JUAN CARLOS AYALA MARQUEZ, having
6 been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MARTINEZ:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Make sure to speak a little bit closer to the
12 microphone, so everyone can hear you.

13 Would you please state your full name and spell
14 it for the record.

15 A. Juan Carlos Ayala Marquez. J-u-a-n, C-a-r-l-o-s,
16 space, A-y-a-l-a, space, M-a-r-q-u-e-z.

17 Q. Mr. Ayala, how old are you?

18 A. Twenty-two.

19 Q. Where were you born?

20 A. El Salvador.

21 Q. When did you come here to the United States?

22 A. In 2010.

23 Q. How old were you at that time?

24 A. Fifteen, sixteen years.

25 Q. How did you get here to the United States?

1 A. Illegally.

2 Q. When you first came to the United States, where
3 did you go?

4 A. New York, where my dad was.

5 Q. How long did you stay in New York with your
6 father?

7 A. Like about a year.

8 Q. Where did you go after that?

9 A. I came to Virginia.

10 Q. Where in Virginia?

11 A. Culmore, Falls Church.

12 Q. How far did you go in school before you came to
13 the United States?

14 A. Ninth grade.

15 Q. After you came to the United States, did you
16 continue with school?

17 A. Yes.

18 Q. In New York?

19 A. Yes.

20 Q. When you came to Virginia, did you also continue
21 with school here?

22 A. Yes.

23 Q. What school did you go to?

24 A. JEB Stuart High School.

25 Q. How long did you attend JEB Stuart High School?

1 A. A few months, six months, maybe.

2 Q. What grade were you in?

3 A. Tenth.

4 Q. Mr. Ayala, are you a member of a gang?

5 A. Yes.

6 Q. What gang?

7 A. MS-13.

8 Q. What's the full name of MS-13?

9 A. Mara Salvatrucha.

10 Q. When did you first start hanging out with MS-13?

11 A. When I was like about 18 years old.

12 Q. Within MS-13, is there a particular clique that
13 you joined?

14 A. Yes.

15 Q. What clique is that?

16 A. PVLS.

17 Q. What's the full name of PVLS?

18 A. Parque de Vista Locotes Salvatruchas.

19 Q. For the court reporter, can we spell Parque --
20 can we spell that?

21 A. First word, P-a-r-q-u-e, space, d-e, space,
22 V-i-s-t-a, space, L-o-c-o-t-e-s, space,
23 S-a-l-v-a-t-r-u-c-h-a-s.

24 Q. Thank you.

25 Are you currently incarcerated?

1 A. Uh-huh. Yes.

2 Q. For what?

3 A. Murder charge.

4 Q. How did you plead to that murder charge?

5 A. Guilty.

6 Q. Where was that? Where did you plead?

7 A. In this court, in Alexandria.

8 Q. Was that for a murder you committed with other
9 gang members?

10 A. Yes.

11 Q. Have you been sentenced for your crime?

12 A. No.

13 MS. MARTINEZ: Could we show, please, the
14 witness what has been marked as Government's
15 Exhibit 121.

16 BY MS. MARTINEZ:

17 Q. Please look at the document that was handed to
18 you. Does that appear to be a copy of your plea
19 agreement?

20 A. Yes.

21 Q. If you could look at the last page of the plea
22 agreement, is that your signature?

23 A. Yes.

24 Q. What are your obligations under this plea
25 agreement?

1 A. To say the truth.

2 Q. What benefit do you hope to get from entering
3 into a plea agreement with the government?

4 A. A review of my sentence.

5 Q. Who do you understand will determine your
6 sentence?

7 A. The judge.

8 Q. Who do you understand will determine any
9 reduction you later get to your sentence?

10 A. The judge.

11 Q. What do you understand will be the consequences
12 if you lie during this case?

13 A. I would not receive a reduction in my sentence.

14 Q. Mr. Ayala, you indicated that you joined the
15 gang, PVLS, MS-13, at age 18. Why did you join the
16 gang?

17 A. Because there were a lot of guys from the Mara
18 over at where I lived. I just wanted to be cool with
19 them. That's all.

20 Q. What is a member of MS-13 called?

21 A. Homeboy.

22 Q. Were you a homeboy?

23 A. Yes.

24 Q. When you became a homeboy, were you given a
25 nickname?

1 A. Yes.

2 Q. What nickname?

3 A. Skin.

4 Q. Skinny?

5 A. Skinny.

6 Q. Are you known by any nicknames other than Skinny?

7 A. Yes.

8 Q. What nickname?

9 A. Flaco, Escalera.

10 Q. Any others?

11 THE INTERPRETER: The interpreter is going
12 to request a repetition, Your Honor.

13 THE WITNESS: Some friends call me
14 Camalarga, as well.

15 BY MS. MARTINEZ:

16 Q. For the court reporter, can we spell Camalarga?

17 A. C-a-m-a-l-a-r-g-a.

18 Q. Before you became a homeboy, was there another
19 level in the gang that you had?

20 A. *Chequeo*.

21 Q. What is a *chequeo*?

22 A. It's like before getting to be a homeboy, you got
23 a foot inside the Mara so that they can jump you.

24 Q. Before you were a *chequeo*, was there another
25 level that you had?

1 A. (Not translated.)

2 THE INTERPRETER: The interpreter doesn't
3 quite understood what he said. May the interpreter --

4 THE COURT: Yes.

5 THE WITNESS: I was doing errands as a *paro*
6 for the Mara.

7 BY MS. MARTINEZ:

8 Q. Was the word you used *paro*, p-a-r-o?

9 A. Yes.

10 Q. What is a *paro*?

11 A. Somebody who does little favors for the Mara,
12 like, little favors, without getting to give one a lot
13 of trust yet.

14 Q. What kind of little favors did you do for the
15 gang as a *paro*?

16 A. To sell drugs, to collect rent.

17 Q. What do you mean by rent?

18 A. It's like a collection that you do to people who
19 have some sort of illegal business.

20 Q. What kind of illegal business?

21 A. Like drugs, prostitution.

22 Q. How long were you a *paro* for MS-13?

23 A. Some like, five months, six months.

24 Q. What happened after that?

25 A. I got in to be with them a little more fully, to

1 be closer to them, to go out with them.

2 Q. What was your status then?

3 A. I'm sorry. Could you repeat the question?

4 Q. What was your level in the gang after the five or
5 so months that you were the *paro*?

6 A. Once I get jumped, I was just one more soldier.

7 Q. Before you became a homeboy, what was your level?

8 A. I was just a soldier, that all. I didn't have a
9 position or anything.

10 Q. You mentioned the position *chequeo* previously.

11 A. Yes.

12 Q. When did you become a *chequeo*?

13 Was that before or after you were a homeboy?

14 A. Before.

15 Q. And, was -- were you a *chequeo* before or after
16 you were a *paro*?

17 A. After being a *paro*.

18 Q. How long were you a *chequeo*?

19 A. Like about two months, one month.

20 Q. As a *chequeo*, what did you do for the gang?

21 A. To sell drugs, to steal.

22 Q. What did you steal?

23 A. Money. We would buy -- steal money from cars.
24 We would mug people.

25 Q. What happened after the approximately two months

1 when you were a *chequeo*? What happened at the end of
2 those two months?

3 A. They jumped me in.

4 Q. What do you mean when you say, "They jumped me
5 in"?

6 A. They jumped me in for 13 seconds, so that I would
7 be a part, finally, from the Mara.

8 Q. What happens during those 13 seconds when someone
9 is jumped in?

10 A. Three persons are beating me, and then someone is
11 counting the 13 seconds.

12 Q. What do they beat you with?

13 A. With the hands, the feet.

14 Q. Are weapons involved?

15 A. No.

16 Q. How old were you when you were jumped in?

17 A. Nineteen, almost nineteen.

18 Q. What does someone have to do to earn sufficient
19 respect in the gang to be jumped in as a homeboy?

20 A. To earn the trust of the other homeboys, the
21 homeboys who have been longer -- who are more better on
22 in the clique.

23 Q. How did you earn the trust of the older homeboys
24 in the clique?

25 A. The majority of them already knew me, because I

1 had been there living in Culmore for a while. Some of
2 them knew what I used to do or what I was in, also.

3 Q. When you say what I used to do, what are you
4 talking about?

5 A. I mean, just in the street, selling drugs and all
6 of that stuff.

7 Q. When you said "what I was into," what did you
8 mean?

9 A. I didn't care. I was in the street, and
10 sometimes I was also walking about with people who also
11 might have been gang members. So, I mean, they saw me,
12 and that's how I also earned their trust.

13 Q. When you joined the clique, PVLS, was there a
14 leader of the clique?

15 A. Yes.

16 Q. Who was the leader?

17 A. El Payaso.

18 Q. Who is Payaso?

19 A. He's the clique's runner, and he's in prison.

20 Q. How do you know he's in prison?

21 A. I used to speak with him.

22 Q. How would you speak with him?

23 A. Through the cellphone.

24 Q. What was Payaso's position called?

25 A. The runner, the *ranflero*.

1 Q. The Spanish word that was just used, so that was
2 translated to runner, and then there was a Spanish word.
3 Can we spell the Spanish word -- I believe it was
4 *ranflero*, for the court reporter.

5 A. R-a-n-f-l-e-r-o.

6 Q. Other than Payaso, who was the runner from inside
7 a prison, was there a leader of the clique who was not
8 in prison?

9 A. Yes.

10 Q. Who was that?

11 THE INTERPRETER: The interpreter didn't
12 catch the first word.

13 THE WITNESS: A Lil Demente.

14 BY MS. MARTINEZ:

15 Q. Lil Demente?

16 A. Yes.

17 Q. Through your experience with MS-13, were you
18 taught the rules of MS-13?

19 A. Yes, some of them.

20 Q. Who taught you?

21 A. The homeboys in my clique.

22 Q. What, if any, rules does MS-13 have about
23 cooperating with the police?

24 A. That cannot be done. You cannot cooperate with
25 the police. That would be a rat.

1 Q. What is supposed to happen to a gang member who
2 violates this rule?

3 A. They give him a green light.

4 Q. What is a green light?

5 A. That they're going to kill him.

6 Q. Who can issue a green light?

7 A. The clique, all of them talking it out, the
8 runner and the clique.

9 Q. If a homeboy helps kill someone who has been
10 green lighted, what does that do to the status or
11 reputation of the homeboy who helped kill?

12 A. He could raise in -- he could go up in rank.

13 Q. I'm sorry. I didn't hear the answer.

14 THE INTERPRETER: "He could go up in rank."

15 BY MS. MARTINEZ:

16 Q. How about a *chequeo*? What happens to a *chequeo*'s
17 status or reputation within the gang if the *chequeo*
18 helps kill someone who has been green lighted?

19 A. The homeboys could deem that he has like the
20 courage to do, like stuff like that for the Mara, and
21 jump him in as a homeboy.

22 Q. What does MS-13 call rival gangs?

23 A. *Chavalas*.

24 Q. What, if any, rules does MS-13 have with respect
25 to *chavalas*?

1 A. There's no respect for them. You have to kill
2 them.

3 Q. When you say you have to kill them, what do you
4 mean?

5 A. That if you run into one in the street or
6 whatever, then you have to kill them.

7 Q. If a gang member does that, runs into a *chavala*
8 on the street, and kills him, what happens to that gang
9 member's status or reputation within the gang?

10 A. He would lose some -- he would lose some
11 reputation, and he could receive a *calentón* or he could
12 even be killed.

13 Q. Why would a gang member lose reputation for
14 killing a *chavala*?

15 A. I'm sorry. Could you repeat the question?

16 Q. Maybe I didn't understand you correctly. Did you
17 say that if a gang member kills a *chavala*, he loses his
18 reputation?

19 A. Yes.

20 Q. Why does a gang member lose his reputation for
21 killing a *chavala*?

22 A. Oh. The way I understood her question is that if
23 he were not to kill him, he would lose in reputation; or
24 if he would kill him.

25 Q. Okay. Let's clarify. Let's start with a

1 scenario where a gang member sees a *chavala* and does not
2 kill him. In the instance where the gang member does
3 not kill the *chavala*, what would happen to his
4 reputation?

5 A. He would -- his reputation would be lowered.
6 They could give him a *calentón* or even kill him.

7 Q. Now, how about the scenario, the opposite, where
8 a gang member sees a *chavala* and does kill him. What
9 happens to the gang member's reputation?

10 A. He could go up in rank, depending on how many
11 *chavalas* has he killed.

12 Q. Let's talk a little bit more about the membership
13 of your clique, PVLS. You've already mentioned the
14 leader is Payaso and Demente. When you joined PVLS, who
15 were the other homeboys?

16 A. There was Silencio. There was Lil Poison. There
17 was Lil Pardo. There was Lil Pesadilla. There was Lil
18 Payaso. There was Duende. There was Greñas. There was
19 Lil Thunder. And there was Blacky.

20 Q. When were you arrested?

21 A. January 2014.

22 Q. By the time you were arrested, were there other
23 homeboys, too?

24 A. Yes.

25 Q. Who?

1 A. Lil Slow, Lil Evil.

2 Q. Was the first one Lil Slow?

3 A. Yes.

4 Q. Were there other leaders, too, by the time that
5 you were arrested, in addition to Payaso and Demente?

6 A. Yes.

7 Q. Who?

8 A. Lil Greñas, Lil Payaso.

9 Q. Were you ever a leader?

10 A. I took a position, not like a leader, but like in
11 charge of some things.

12 Q. What does that mean?

13 A. Like to hand over the money for the drugs.

14 Q. When did you take that position?

15 A. That was a little before I ended up in jail.

16 Q. And we've mentioned a lot of names, so I'd like
17 to go through some of them one by one. Okay?

18 A. Okay.

19 Q. Let's start with Demente. Do you know Demente by
20 any other names?

21 A. No. I just know him as Demente when I was
22 outside.

23 Q. By the time that you were arrested, how long had
24 you known Lil Demente?

25 A. Couple of months.

1 MS. MARTINEZ: Your Honor, may we show the
2 witness what has already been admitted as Government's
3 Exhibit 75?

4 THE COURT: Yes.

5 MS. MARTINEZ: May we publish to make it
6 easier for Mr. Toliver?

7 THE COURT: Yes.

8 BY MS. MARTINEZ:

9 Q. Do you know who that is?

10 A. Yes.

11 Q. Who is it?

12 A. Lil Demente.

13 Q. You mentioned someone named Greñas.

14 A. Yes.

15 Q. Do you know Greñas by any other names?

16 A. Yes.

17 Q. What names?

18 A. El Gatito, Medimetro, Rambito.

19 Q. Any others?

20 A. El Peluca.

21 Q. For the court reporter's purposes, can we spell
22 these names?

23 Let's start with Peluca.

24 A. P-u-l-u-c-a (sic).

25 Q. Was another one you said Medimetro?

1 Would you spell that for the court reporter?

2 | A. Yes. M-e-d-i-o-m-e-t-r-o.

3 Q. And forgive me, but I don't remember if you said
4 another name. You said Peluca, Mediometro. Was there
5 another name or now?

6 | A. Rambito.

7 | Q. Would you spell Rambito, please.

8 | A. R-a-m-b-i-t-o.

9 Q. Were there any others for Greñas?

10 | A. I don't think so.

11 Q. By the time that you were arrested, how long had
12 you known Greñas?

13 A. I met him before joining the Mara. I saw him a
14 couple of times.

15 Q. You mentioned that at some point Greñas was a
16 leader in the clique; is that right?

17 | A. Yes.

18 Q. When did he become a leader?

19 A. When Lil Demente was arrested. Payaso gave him
20 more trust, so --

21 MR. LEIVA: Your Honor, just a second. And
22 I apologize. I can understand what he's said before
23 it's translated. I would object for the lack of
24 foundation, Your Honor, and hearsay.

25 MS. MARTINEZ: The question is about his

1 knowledge of the gang structure. He's testified
2 extensively, Your Honor. I can lay more foundation.

3 THE COURT: "When did he become a leader,"
4 was the question that she asked.

5 MR. LEIVA: He was responding, how he knew
6 when my client allegedly became a leader.

7 THE COURT: He's asking for a foundation
8 for --

9 MS. MARTINEZ: I'll lay some foundation,
10 Your Honor.

11 THE COURT: -- when the change took place.
12 Sustained.

13 BY MS. MARTINEZ:

14 Q. Was Greñas a leader during a period of time
15 before you were arrested?

16 A. Yes, on the streets.

17 Q. As a member of PVLS, were you familiar with who
18 the leaders of PVLS were?

19 A. Yes.

20 Q. Were there times when leaders would change, when
21 a new person would become a leader?

22 A. Yes.

23 Q. When a new person became a leader, while you were
24 on the street, were you aware of the reasons that the
25 new person became a leader?

1 A. Yes.

2 Q. Why did Greñas become a leader in PVLS?

3 A. Because, Lil Demente was arrested.

4 Q. Do you remember approximately when that was?

5 A. I don't remember the exact date.

6 Q. Do you know what Demente was arrested for?

7 A. Yes.

8 Q. What?

9 A. For attempted murder.

10 Q. Do you know who the victim of the attempted
11 murder was?

12 A. Yes.

13 Q. Who?

14 A. Peligroso.

15 Q. Do you see Greñas in court today?

16 A. Yes.

17 Q. Would you please identify him by describing where
18 he's sitting and an item of clothing that he's wearing?

19 A. He has a striped checkered shirt, and he's about
20 two meters from where she is standing.

21 MS. MARTINEZ: Your Honor, may the record
22 reflect that the witness has properly identified
23 Defendant Jose Lopez Torres as Greñas.

24 THE COURT: So noted.

25 BY MS. MARTINEZ:

1 Q. You also mentioned someone named Lil Payaso.

2 A. Yes.

3 Q. Do you know Lil Payaso by any other name?

4 A. Yes.

5 Q. What names?

6 A. Omar, and before becoming Lil Payaso, he was Lil
7 Slow.

8 Q. Do you know why he changed his name from Lil Slow
9 to Lil Payaso?

10 A. I only know that he was arrested together with
11 Payaso, and Payaso gave him the nickname.

12 Q. Gave him which --

13 THE INTERPRETER: Correction, "the gang
14 nickname."

15 BY MS. MARTINEZ:

16 Q. Which gang nickname?

17 A. Lil Payaso.

18 Q. When you said he was arrested and with Payaso, is
19 that Payaso the runner whom you mentioned earlier?

20 A. Yes.

21 Q. By the time that you were arrested, how long had
22 you known Lil Payaso?

23 A. Couple of months.

24 Q. You mentioned that Lil Payaso at some point had a
25 leadership role in the clique; is that right?

1 A. Yes.

2 Q. Was that before you were arrested?

3 A. Yes.

4 Q. When was Lil Payaso a leader of the clique?

5 A. When he was released from prison, Payaso gave him
6 the second word.

7 Q. What do you mean by second word?

8 A. Like the one after the runner.

9 Q. Do you see Lil Payaso in court today?

10 A. Yes.

11 Q. Would you please identify him by describing
12 something he's wearing and where he's seated.

13 A. He is wearing a white shirt with a black and gray
14 striped tie, and he's sitting behind you.

15 MS. MARTINEZ: Your Honor, may the record
16 reflect that the witness has identified Defendant Omar
17 Dejesus Castillo, as Lil Payaso.

18 THE COURT: So noted.

19 BY MS. MARTINEZ:

20 Q. You mentioned someone named Lil Slow --

21 A. Yes.

22 Q. -- when you mentioned -- when you initially
23 mentioned Lil Slow, Were you talking about Lil Payaso or
24 someone else?

25 A. Someone else.

1 Q. Who is Lil Slow?

2 A. Another clique member.

3 Q. Do you know Lil Slow by any other names?

4 A. Yes.

5 Q. What names?

6 A. Spider.

7 Q. How long had you known Lil Slow by the time that
8 you were arrested?

9 A. Couple of months, also.

10 MS. MARTINEZ: Your Honor, may we show the
11 witness what has already been admitted as Government's
12 Exhibit 76.

13 THE COURT: Yes.

14 BY MS. MARTINEZ:

15 Q. Do you know who that is on the screen?

16 A. Yes.

17 Q. Who is it?

18 A. Lil Slow.

19 Q. You mentioned also someone named Leopardo.

20 A. Yes.

21 Q. Do you know Leopardo by any other names?

22 A. Yes.

23 Q. What names?

24 A. Kanavi, Bago, Lil Hueso.

25 Q. For the court reporter, let's spell each of

1 those, starting with Kanavi?

2 A. K-a-n-a-v-i.

3 Q. How about Bago?

4 A. B-a-g-o.

5 Q. And Lil Hueso?

6 A. L-i-l, H-u-e-s-o.

7 Q. Who was Leopardo?

8 A. He was a clique member.

9 Q. What was his level?

10 A. A soldier.

11 Q. You've used the word "soldier." You've also used
12 the word "homeboy." Is there any difference between
13 soldier and homeboy within MS-13?

14 A. No.

15 Q. Do you see Leopardo in court today?

16 A. Yes.

17 MR. SALVATO: Your Honor, just to eliminate
18 any issue, we would stipulate that Leopardo is here, and
19 this person would identify him as this person is
20 Leopardo.

21 THE COURT: So noted.

22 MS. MARTINEZ: Your Honor, I would still
23 like to have the witness identify him so the jury sees
24 him identifies him.

25 THE COURT: Okay.

1 BY MS. MARTINEZ:

2 Q. Would you identify Leopardo based on where he's
3 seating and an item of clothing that he's wearing.

4 A. He's wearing a light blue shirt, a light blue
5 shirt with a tie, and he's sitting four people from
6 where you're standing.

7 MS. MARTINEZ: Your Honor, may the record
8 reflect that he has identified Defendant Lemus Cerna.

9 THE COURT: So noted.

10 BY MS. MARTINEZ:

11 Q. I believe you also mentioned someone by the name
12 of Pesadilla?

13 A. Yes.

14 Q. Do you know Pesadilla by any other name?

15 A. Yes.

16 Q. What names?

17 A. Black, and Lil Tuner.

18 Q. The first one was El Black; is that right?

19 A. Yes.

20 Q. And then Lil Tuner. For the court reporter,
21 would you spell Lil Tuner?

22 A. I'm not sure how to spell Tuner.

23 Q. That's okay.

24 How long had you known Pesadilla by the time you
25 were arrested?

1 A. Couple of months, also.

2 Q. What was his level in the gang?

3 A. He was a soldier.

4 Q. Do you see him in court today?

5 A. Yes.

6 Q. Would you identify him by describing a piece of
7 clothing he's wearing and where he's sitting in court?

8 A. I'm sorry, I can't see him because there are
9 other people.

10 MS. MARTINEZ: Your Honor, may he stand?

11 THE COURT: Yes.

12 MS. MARTINEZ: Please stand if that helps
13 you see.

14 THE WITNESS: He's behind you, with a
15 greenish shirt.

16 BY MS. MARTINEZ:

17 Q. Could you just describe which table he's sitting
18 at, if this table to my right is the first table, and
19 there are more tables behind it, which table is he at?

20 A. He's in the table behind.

21 Q. Behind the first table?

22 A. *Sí*. (Answer not translated.)

23 Q. And to make sure that the record is clear, how
24 many seats over in that table he is, starting with the
25 lady with the gray hair, how many people over?

1 The lady with the glasses.

2 A. Two.

3 MS. MARTINEZ: Thank you.

4 Your Honor, may the record reflect that the
5 witness has identified Defendant Alvin Gaitan Benitez as
6 Pesadilla.

7 THE COURT: So noted.

8 MS. MARTINEZ: And may the record also
9 reflect that I meant it as a compliment. I apologize.

10 BY MS. MARTINEZ:

11 Q. Another gang member whom you mentioned was Lil
12 Poison?

13 A. Yes.

14 Q. Who was Lil Poison?

15 A. Another gang soldier.

16 Q. Do you know him by any other name?

17 A. Lil Wasón, or Wasón.

18 Q. Could we spell Wasón for the court reporter?

19 A. W-a-s-o-n.

20 Q. How long had you known Lil Poison when you were
21 arrested?

22 A. Maybe one year.

23 MS. MARTINEZ: Your Honor, could we show the
24 witness what has previously been admitted as
25 Government's Exhibit 69-D.

1 THE COURT: Yes.

2 BY MS. MARTINEZ:

3 Q. Do you recognize this person?

4 A. Yes.

5 Q. Who is it?

6 A. Lil Poison.

7 Q. You also mentioned someone named Duende?

8 A. Yes.

9 Q. Do you know Duende by any other name?

10 A. No.

11 Q. How long had you known Duende by the time you
12 were arrested?

13 A. Couple of months.

14 Q. What was his level in the gang?

15 A. He was only just a soldier.

16 MS. MARTINEZ: With the help of the court
17 security officer, may we show the witness what has been
18 previously marked for identification purposes as
19 Government's Exhibit 73?

20 BY MS. MARTINEZ:

21 Q. Do you have Government's Exhibit 73 in front of
22 you?

23 A. Yes.

24 Q. Do you recognize the person in that picture?

25 A. Yes.

1 Q. Who is it?

2 A. Duende.

3 MS. MARTINEZ: Your Honor, the government
4 moves into evidence Government's Exhibit 73.

5 THE COURT: Received into evidence.

6 MS. MARTINEZ: May we publish?

7 THE COURT: Yes.

8 BY MS. MARTINEZ:

9 Q. You also mentioned someone named Lil Evil?

10 A. Yes.

11 Q. Who is Lil Evil?

12 A. A soldier of the gang, of the clique.

13 Q. And do you know him by any other names?

14 A. Yes.

15 Q. What?

16 A. Cusuco.

17 Q. Would you spell that for the court reporter,
18 please?

19 A. C-u-s-u-c-o.

20 Q. Any other names?

21 A. No.

22 Q. How long had you known Lil Evil by the time you
23 were arrested?

24 A. A few months.

25 Q. Once you joined the clique, PVLS, were there

1 meetings with other members of the clique?

2 A. Yes.

3 Q. How often did the clique meet?

4 A. Every two weeks, every week.

5 Q. Where were the meetings?

6 A. Different places.

7 Q. What kinds of places?

8 A. The woods, a homeboy's house.

9 Q. What city or neighborhood were the meetings in?

10 A. Several times in Culmore, the forest behind
11 Barcroft View.

12 Q. What is Barcroft View?

13 A. Some -- an apartments.

14 Q. Who attended the clique meetings?

15 A. All the homeboys, most of the clique homeboys.

16 Q. How about *chequeos*?

17 A. No.

18 Q. How about *paros*?

19 A. No.

20 Q. What topics were covered at the meetings?

21 A. Subjects that had to do with the clique, the
22 clique's money.

23 Q. What subjects had to do with the clique?

24 THE INTERPRETER: Interpreter needs to
25 ask --

1 THE COURT: All right.

2 THE WITNESS: To start the clique, purchase
3 weapons, buy drugs, do hits.

4 BY MS. MARTINEZ:

5 Q. What's a hit?

6 A. *Pagadas* are murders, to kill *chavalas*.

7 Q. What is the Spanish word that you used for that?

8 A. *Pagadas*.

9 Q. Could you spell that for the court reporter.

10 A. P-a-g-a-d-a-s.

11 Q. *Pagadas* means murders?

12 A. Yes.

13 Q. At these clique meetings, were dues collected?

14 A. Sometimes.

15 Q. How much?

16 A. Whatever people had; \$10.

17 Q. What was the money used for?

18 A. For the clique.

19 Q. For what for the clique?

20 A. To buy drugs.

21 Q. You've mentioned drugs many times already. Were
22 you involved in selling or buying drugs for the clique?

23 A. Yes.

24 Q. Selling, buying, or both?

25 A. Both.

1 Q. What kinds of drugs?

2 A. Marijuana, cocaine, heroin, crystal meth.

3 Q. Have you also used drugs?

4 A. Yes.

5 Q. What kind?

6 A. All types of drugs that I had just mentioned,
7 except heroin.

8 Q. How often?

9 A. Every day.

10 Q. When you say "every day," are you talking about
11 before you were arrested or also now in jail?

12 A. Before I was arrested.

13 Q. Before you were arrested, how often did you use
14 marijuana?

15 A. Every day, maybe 10, 15 times a day.

16 Q. How much did you use cocaine before you were
17 arrested?

18 A. Well, I slowed down a bit after I was jumped into
19 the gang, but before I did, I did it quite often.

20 Q. After you were jumped into the gang, how often
21 did you use cocaine?

22 A. Maybe every two days.

23 Q. How about crystal meth; how often did you use
24 crystal meth before you were arrested?

25 A. I only used it twice.

1 Q. The drugs that you sold for the gang, for the
2 clique, where did you get them?

3 A. The first times we bought them from some guys who
4 were there around the neighborhood where we lived.

5 Q. You said the first times. How about after those
6 first times.

7 A. Then, we got drugs from Los Angeles, from some
8 homeboys who were over there.

9 Q. Who were the homeboys in Los Angeles?

10 A. I can't remember their names. I just remember
11 one, Tuner.

12 Q. What clique did the homeboys in Los Angeles
13 belong to?

14 A. From ours, some of them.

15 Q. How did the drugs get from Los Angeles to
16 Virginia?

17 A. On one occasion, some of the homeboys of the
18 clique went over there to pick them up.

19 Q. What homeboys?

20 A. I remember Lil Demente and Greñas. And, at other
21 times, we would get it by mail.

22 Q. When you got it by mail, who sent it to you?

23 A. The homeboy that -- in Los Angeles, and we would
24 receive it at the house of some homeboy here.

25 Q. What homeboy?

1 A. I got it on some occasions, and Greñas and Lil
2 Pesadilla and Lil Poison.

3 Q. The connection in Los Angeles, who in the clique
4 in Virginia had the connection with the guys in Los
5 Angeles.

6 A. Greñas.

7 Q. Where did the clique sell the drugs?

8 A. Many places, in our area, in Culmore.

9 Q. In addition to Culmore, where else did the
10 cliques sell the drugs?

11 A. Other states.

12 Q. What states?

13 A. Maryland, New York.

14 Q. How did the clique get the drugs to New York?

15 A. Sometimes we would take them over in a car.

16 Sometimes we would send them by mail, also.

17 Q. Who would take them by car?

18 A. Sometimes Lil Poison with Greñas took it to New
19 York.

20 Q. Who would send the drugs by mail to New York?

21 A. I remember that I did it on one occasion.

22 Q. Do you know of anyone else who did?

23 A. No.

24 Q. Who were you sending the drugs to in New York?

25 A. Homeboy of the clique and homeboys of another

1 clique who wanted to raise it.

2 Q. Raise what?

3 A. Their clique.

4 Q. The drugs that the clique received from Los
5 Angeles, how did the clique pay for those drugs?

6 A. Well, we come with the drugs and we would send
7 back the money in -- in installments.

8 Q. Who would you send the money to?

9 A. To the homeboys in Los Angeles, and to other
10 people whose name we were given to deposit it in their
11 accounts.

12 Q. Who gave you the names?

13 A. The homeboys who got us the drugs in Los Angeles.

14 Q. What kinds of drugs did the clique get from Los
15 Angeles?

16 A. Crystal, heroin, marijuana, cocaine.

17 Q. What kind of drugs did the clique sell in New
18 York, or sell to homeboys in New York?

19 A. Crystal and cocaine. On some occasions we also
20 sent marijuana.

21 Q. What kinds of drugs did the clique sell in
22 Culmore?

23 A. All the four I have mentioned to you.

24 Q. How about in Maryland?

25 A. Crystal and cocaine.

1 Q. What did the clique do with the money that it
2 made from the sale of the drugs?

3 A. Help some homeboys who are in jail in
4 El Salvador. Help our *ranflero* who is in jail here.

5 Q. Let's start -- sorry. Please continue.

6 A. Pay for the rent where we were living, food.

7 Q. Let's start with the homeboys in El Salvador.
8 Who were the homeboys in El Salvador that the clique
9 helped?

10 A. Poison and Tigre.

11 Q. Where was Poison in El Salvador?

12 A. He's in jail. He's locked up.

13 Q. Where is Tigre in El Salvador?

14 A. He's also in jail.

15 Q. How do you know that Poison and Tigre are in
16 jail?

17 A. Because, I would speak with them.

18 Q. How would you speak with them?

19 A. By cellphone.

20 Q. How would the clique send money to Poison and
21 Tigre in El Salvador?

22 A. He would give us the names of some male or female
23 friends of his, and we would sent it to them, and they
24 would take them to the prison or buy food for them. I
25 don't know.

1 Q. In what country were these male or female friends
2 of Poison or Tigre?

3 A. In El Salvador.

4 Q. How did you get the money to El Salvador?

5 A. Via Western Union.

6 Q. Who sent the money via Western Union?

7 A. I did it on some occasions. The other homeboys
8 of the clique also did.

9 Q. What other homeboys sent the money from Western
10 Union to El Salvador?

11 A. The ones I remember, Greñas, Lil Poison and
12 Silencio.

13 Q. Who in the clique was involved in the clique's
14 drug business, in addition to yourself?

15 A. Can you repeat the question?

16 Q. Who in the clique -- what homeboys in the clique
17 were involved in the clique's drug business?

18 A. Primarily Greñas and myself.

19 Q. What homeboys in the clique sold drugs for the
20 clique?

21 A. All of them.

22 Q. Were there *chequeos* who sold drugs for the
23 clique?

24 THE INTERPRETER: Could you repeat the
25 question?

1 MS. MARTINEZ: Of course.

2 BY MS. MARTINEZ:

3 Q. Were there *chequeos* would sold drugs for the
4 clique?

5 A. Sometimes.

6 Q. What *chequeos*?

7 A. Solitario, Lil Guasón. Those were the only two
8 *chequeos* there were. Afterwards, there were some *paros*
9 who would also sell.

10 Q. Let's talk about Solitario. Do you know -- do
11 you know Solitario by any other name?

12 A. Yes.

13 Q. What name or names?

14 A. El Colita.

15 Q. Can we spell Colita for the court reporter.

16 A. Yes. C-o-l-i-t-a.

17 Q. How long had you known Solitario before you were
18 arrested?

19 A. Perhaps about a year.

20 Q. Do you see Solitario in court today?

21 A. Yes.

22 Q. Would you please identify him by describing an
23 item of clothing he's wearing and the location in court
24 he is sitting.

25 A. He's got like a light blue shirt. He's on the

1 third row, the last one in the row.

2 MS. MARTINEZ: Your Honor, may the record
3 reflect that the witness has identified
4 Manuel Ernesto Paiz Guevara.

5 THE COURT: So noted.

6 BY MS. MARTINEZ:

7 Q. Do you know when Solitario first started
8 associating with the clique?

9 A. I don't remember the exact date, but yes, I do
10 remember how it started.

11 Q. What do you remember about it?

12 A. I just remember that he started walking with the
13 Lil Poison --

14 Q. What do you mean --

15 A. -- at school.

16 Q. What do you mean by "walking with Lil Poison"?

17 A. Well, he would always hang out with him. He
18 would be doing his thing and they would be like,
19 smoking, were like friends at first, not walking.

20 Q. What does it mean within MS-13 for someone to be
21 walking?

22 A. It's like they were giving him schooling in La
23 Mara. They're showing him how La Mara works.

24 Q. What kind of schooling?

25 A. Teach him about the *chavalas*, all about the rules

1 or how things are in La Mara, teach him how seriously.

2 Ms. Martinez: Your Honor, may we show the
3 witness what has been marked for identification purposes
4 as Government's Exhibits 71-A and 71-B.

5 THE COURT: Yes.

6 BY MS. MARTINEZ:

7 Q. Do you have those pictures in front of you?

8 A. Yes.

9 Q. Who is in the pictures?

10 A. Solitario.

11 MS. MARTINEZ: Government moves into
12 evidence Government's Exhibits 71-A and 71-B.

13 THE COURT: Received.

14 MS. MARTINEZ: May we publish?

15 THE COURT: Yes.

16 BY MS. MARTINEZ:

17 Q. Starting with 71-A, And now 71-B, Solitario's
18 hair is different in those two pictures. Do you know
19 when he changed his hair?

20 A. When he started walking with us in La Mara.

21 Q. Why?

22 A. Because long hair doesn't go with La Mara.

23 Q. What do you mean?

24 A. Most of the *chavalas* have long hair.

25 Q. Is it permitted within MS-13 to have long hair?

1 A. No.

2 Q. How did the clique keep track of money from dues
3 and from drug sales?

4 A. Keeping accounting in notebooks.

5 Q. Who had the notebooks?

6 A. I remember I had them for a while. Some other
7 homeboys had them, also.

8 Q. What other homeboys?

9 A. Greñas, Lil Poison, Leopardo.

10 THE COURT: Counsel, let's take the
11 afternoon recess for about 15 minutes.

12 Take the afternoon recess, ladies and
13 gentlemen. You may be excused. Fifteen minutes. Thank
14 you.

15 (Court recessed at 3:40 p.m. and reconvened
16 at 3:58 p.m.)

17 THE COURT: I'm just having the witness
18 brought out.

19 (Witness resumed stand.)

20 THE COURT: You can bring our jury out.

21 (Jury present.)

22 THE COURT: You may be seated.

23 Counsel, you may proceed.

24 DIRECT EXAMINATION (Continued)

25 BY MS. MARTINEZ:

1 Q. Mr. Ayala, before the break, we were talking
2 about the notebooks in which the clique kept track of
3 its money from dues and from drug sales, right?

4 A. Yes.

5 Q. And I believe you said, but correct me if I'm
6 wrong, that various members of the cliques had these
7 notebooks at different times, including you, Greñas, Lil
8 Poison and Leopardo?

9 A. Yes, that's correct.

10 MS. MARTINEZ: Your Honor, may we show the
11 witness what has been marked for identification purposes
12 as Government's Exhibits 41-A and 41-B?

13 THE COURT: Yes.

14 MS. MARTINEZ: Mr. Toliver, those are
15 physical exhibits that are here -- that are right there.
16 Thank you.

17 BY MS. MARTINEZ:

18 Q. Would you please look at Government's
19 Exhibits 41-A and 41-B. Please feel free to take them
20 out of the bag and open them up to see what they are.

21 MS. MARTINEZ: Court's indulgence.

22 I've been informed by my agent that the bags
23 are still sealed as evidence. May we have Your Honor's
24 permission to break the seal and open this evidence?

25 THE COURT: Yes.

1 MS. MARTINEZ: I apologize, Your Honor. I
2 didn't anticipate this, but it does make sense that
3 they're sealed.

4 THE COURT: Hand the documents to
5 Mr. Toliver.

6 The record should reflect that the court
7 security officer is cutting the seal.

8 Thank you.

9 BY MS. MARTINEZ:

10 Q. Mr. Ayala, please take those items out of the bag
11 and look through them to see if you know what they are.

12 A. Yes, I know what it is.

13 Q. What are they?

14 A. There is the accounting and some notes from the
15 clique.

16 MS. MARTINEZ: Your Honor, government moves
17 into evidence Government's Exhibit 41-A and 41-B.

18 THE COURT: Has the defense seen these
19 exhibits?

20 MS. MARTINEZ: Your Honor, the defense has
21 seen color photocopies of all of the pages of the
22 exhibits.

23 THE COURT: All right. 41-A and 41-B will
24 be received.

25 MS. MARTINEZ: Your Honor, we have also

1 color photocopies that have page numbers. May we use
2 those with the witness for ease of referring to each
3 page?

4 THE COURT: Yes. Does the defense have
5 copies of them?

6 MS. MARTINEZ: Yes, Your Honor.

7 THE COURT: Mr. Toliver, I think she has
8 them here. Oh, there's one there. And I'll take one.
9 Thank you.

10 MS. MARTINEZ: Your Honor, may we publish
11 the pages as I reference them, or would you like --
12 would Your Honor like him to look first before we
13 publish?

14 THE COURT: Well, he's identified the book.
15 I don't think we need to go through that. Just have
16 him -- focus on whatever page you want him to look at.

17 MS. MARTINEZ: Thank you, Your Honor.

18 May we please put up on the screen page two
19 of Exhibit 41-A.

20 BY MS. MARTINEZ:

21 Q. You can just look on the screen, Mr. Ayala. Do
22 you see that?

23 A. Yes.

24 Q. At the top of that page, can you read what it
25 says?

1 A. Church's debt --

2 Q. Could we --

3 THE INTERPRETER: Or "debt from the
4 iglesia."

5 BY MS. MARTINEZ:

6 Q. Could we do that in Spanish, since it's written
7 in Spanish?

8 For the record, what does it say in Spanish?

9 A. *Deudas de la clica.*

10 Q. Would you read it verbatim, what it actually
11 says, sir?

12 A. (Reading, not translated) --

13 Q. Just a moment. Just the first line.
14 Spell *deudas*.

15 A. D-e-u-d-a-s.

16 Q. What does *deudas* mean?

17 A. Like, money that is owed by the clique.

18 Q. And then you said, "of the *clica*." What is
19 *clica*?

20 A. It's a group, a group.

21 Q. How do you spell *clica*?

22 A. C-l-i-c-a.

23 Q. On this page, what word are you reading to mean
24 *clica*?

25 A. *Iglesia*.

1 Q. Could you spell *iglesia*?

2 A. I-g-l-e-s-i-a.

3 MS. MARTINEZ: Would the interpreter provide
4 the literal translation of *iglesia*.

5 THE INTERPRETER: The interpreter translates
6 *iglesia* means church.

7 BY MS. MARTINEZ:

8 Q. Why does church mean *clica* or clique to you?

9 A. Because there's sometimes like code words or code
10 that we use in order to talk.

11 Q. Below that first line it says "Tio Alejandro."

12 A. Yes.

13 Q. Do you know what that means?

14 A. Not exactly.

15 Q. Okay. Let's go to page 17 of the same exhibit.

16 For the court reporter, we'll go back to page
17 two, and looking at page two, just to make it easier, I
18 will -- well, no.

19 Could you please spell -- have the witness do
20 it -- where it says, "Tio Alejandro."

21 A. T-i-o, A-l-e-j-a-n-d-r-o.

22 Q. Do you understand the significance of this page,
23 generally?

24 A. Yes.

25 Q. What is the general significance of this page?

1 A. That some money is owed to some *clicas*. The
2 amounts of money are written down.

3 Q. When you said you don't know exactly what Tio
4 Alejandro means, what do you mean not exactly?

5 A. Because it could be some clique and I don't know
6 exactly which clique.

7 Q. Please turn to page 17. What is the significance
8 of this page?

9 A. It's the 13th.

10 Q. What's the significance of the 13th to the gang?

11 A. Well, the gang is called MS-13, so that is the
12 number the gang has. That's the number they use to get
13 together the homeboys.

14 Q. Please turn to page 24. What does this say?

15 A. MS.

16 Q. What is the significance of those letters?

17 A. Mara Salvatrucha.

18 Q. Let's go now to Exhibit 41-B, page two. Do you
19 understand the general significance of this page?

20 A. Yes.

21 Q. What is the significance of this page?

22 A. They are -- here you have the initials for the
23 homeboys.

24 Q. Where on the page are the initials of the
25 homeboys?

1 A. On the left side, at the beginning, where it
2 starts, the S, the M, the G and the C.

3 Q. What are the numbers and the letters to the right
4 of those initials of the homeboys?

5 A. Over there it says *niña ojos negros*. That means
6 heroin. Below that, it says, *en la calle*, and that
7 means what has been sold on the street.

8 Q. Let's start with the line, *niña ojos negros*. Can
9 you spell that for the court reporter, please?

10 A. N-i-n- -- with the wavy line on top -- -a,
11 o-j-o-s, n-e-g-r-o-s.

12 Q. Why do you understand *niña ojos negros* to mean
13 heroin?

14 A. Because that's how we refer to heroin when I used
15 to be on the outside. All of the homeboys, all of us,
16 we refer to it as -- that way, in order not to say
17 "heroin."

18 Q. Why would you not want to say the word "heroin"?

19 A. It was just between us, like a code word that we
20 use, so that the other people would perhaps not
21 understand what we were referring to.

22 Q. Below that it says, *en la calle*. Would you spell
23 that for the court reporter, please?

24 A. E-n, l-a, c-a-l-l-e.

25 Q. Why do you understand *en la calle* to mean what

1 was sold on the street?

2 A. Because that's almost how we wrote things on the
3 book. We always wrote "in the street," meaning that we
4 were in the streets selling the drugs.

5 Q. And going back to the letters that you say are
6 initials of the homeboys on the left side, do you know
7 what the list of numbers to the right of those initials
8 refers to?

9 A. Yes. They're like amounts of money.

10 Q. Money for what?

11 A. For drugs.

12 Q. Do you know whose initials are listed here?

13 A. Perhaps some of them.

14 Q. Let's go to page five. What's the word at the
15 very top of the page on the farthest left?

16 A. *Niña*.

17 Q. What does that mean to you?

18 A. It could be some type of drug, but it doesn't say
19 specifically which drug.

20 Q. Below *niña* -- oh, and can we spell *niña* for the
21 court reporter, please.

22 A. N-i-n- with the wavy character -- -a.

23 Q. Below *niña*, there are letters going down each
24 line. Do you see that?

25 A. Yes.

1 Q. What do you understand these letters to mean or
2 signify?

3 A. Yes, I can understand what it is.

4 Q. What is it?

5 A. It is the initials for the homeboys and the money
6 which they have turned over, or which they owe.

7 Q. Money for what or from what?

8 A. For drugs or the drugs that they were selling.

9 Q. Do you know whose initials are listed?

10 A. The L and the P is Lil Poison. The V and the A
11 is Viejos Aparo (phonetic). The L and the G is Lil
12 Guasón. The L and the P, Lil Poison. The S and the L,
13 Solitario.

14 Q. Please turn to page 11. Do you understand the
15 significance of this page?

16 A. Yes, I'm able to read. I understand. There are
17 some words here that I'm not able to read.

18 Q. Of the parts that you're able to read, what do
19 you understand it to mean?

20 A. Well, the beginning you have the date, the month
21 and the date.

22 Q. What is the date?

23 A. The 13th of February -- February the 13th.

24 Q. What else do you understand on the page?

25 A. Well, on the left side, it says, debt, that

1 means, debt, like money that is owed.

2 Q. How about below that?

3 A. There's also the initials of some of the
4 homeboys, and some of the *paros*.

5 Q. Before we go through the initials, the word *deve*,
6 can you spell that for the court reporter.

7 A. D-e-v-e.

8 Q. Do you understand whose initials are listed below
9 for the debts?

10 A. Yes.

11 Q. Please tell us.

12 A. The L and the G, Lil Waso. It could also be Lil
13 Guasón. Afterwards, F beneath that, it says El Malo.
14 That is a *paro*. After that, you get, Soli, which means
15 Solitario. Afterwards, it says, *yo*, which means like,
16 I.

17 And, afterwards, you get L and S, which could be
18 Lil Song, or like Lil Wasón as well. And then the V and
19 the A, which is how we call the *paro*, VA.

20 After, beneath that is L and the P, which could
21 be Lil Poison.

22 What is underneath, I cannot distinguish. I
23 cannot read it.

24 Q. How about the last line on the page. Are you
25 able to read that?

1 A. Yes.

2 Q. What does it say?

3 A. *Mañana*, Solis, go to the bank.

4 Q. Let's start with *mañana*. How is that spelled?

5 A. M-a-n- -- with a wavy character on the top --
6 -n-a.

7 Q. And Solis, how is that spelled there?

8 A. S-o-l-i-s.

9 Q. What do you understand, "*mañana* Solis go to the
10 bank" to mean?

11 A. It means that tomorrow somebody is going to go to
12 the bank. He's going to go to the bank. It could be to
13 deposit some money.

14 Q. Do you know who?

15 A. Oh, it says Solis over here. It could be
16 Solitario.

17 Q. Please go to page 14. Do you understand the
18 significance of this page?

19 A. Yes.

20 Q. What is the significance of this page?

21 A. Money that's being collected from the clique.

22 Q. For what?

23 A. Well, there is always -- I mean there was a
24 program that we were in, several cliques, and there was
25 always money that was being collected to send it to El

1 Salvador to some other cliques which needed it.

2 Q. You said a program that the clique was in.
3 What's the program?

4 A. It like the program -- program of the Virginia
5 cliques.

6 Q. What cliques were involved?

7 A. There were several. There were the Silvas.
8 There were the Guanacos. There was us, the Park Views.
9 There were the ULS. I think that's all. That's the
10 ones that I remember.

11 Q. Are there cliques listed on this page?

12 A. There is the PLS, which is the Pinos. It means
13 the Pinos Locotes Salvatruchas.

14 Q. Can you spell Pinos?

15 A. P-i-n-o-s.

16 Q. Which lines signifies the Pinos?

17 A. The one where it says PLS.

18 Q. Do you understand what the other line signifies?

19 A. ULS means Uniones Locotes Salvatruchas.

20 Q. Please spell Uniones.

21 A. U-n-u -- no, sorry -- U-n-i-o-n-e-s.

22 Q. How about the other lines?

23 A. Well, over ULS, it says Delicia.

24 Q. What is Delicia.

25 A. It's another clique.

1 Q. How do you spell Delicia?

2 A. D-e-l-i-c-i-a.

3 Q. How about the line above that?

4 A. Park View, is a clique -- our clique, Parque de
5 la Vista Locotes Salvatrucha.

6 Q. Can you spell Park View?

7 A. P-a-r-k, V-i-e-w.

8 Q. Please turn to page 15.

9 Do you understand what this is?

10 A. That is -- that is a receipt.

11 Q. Of what?

12 A. That is a receipt served like the commissary,
13 that you buy stuff in jail, something like that.

14 Q. What jail?

15 A. I'm sure that it is Fairfax.

16 Q. Let's turn to page 31. Do you understand the
17 significance of page 31?

18 A. Yes.

19 Q. What is it?

20 A. They're also homeboy debts.

21 Q. What homeboys?

22 A. Some clique homeboys and some *paros*.

23 Q. Can you list the ones that you're able to read?

24 A. Well, the first one, it says Duende. The second
25 one, I can't understand what it says. The third one,

1 Lil Waso. The one that follows, I can't understand that
2 one either. The one after says Lil Tuner. Then
3 Solitario. Then Choky, then, VA, that's a *paro*, the
4 clique's *paro*. Then it says Belén. That's my son's
5 mother. The other one, I can't understand what it says.

6 Q. Please turn to page 54. What is this?

7 A. The clique's letters.

8 Q. What's after the clique's letters?

9 A. 13.

10 Q. What's above the clique's letters and the number
11 13?

12 A. A marijuana leaf and like smoke.

13 Q. Please turn to page 72. Do you understand this
14 page?

15 A. Yes.

16 Q. What's the name in the box on the left side of
17 the page, about halfway down?

18 A. Solitario.

19 Q. What does it say right below Solitario?

20 A. There is a 13.

21 Q. Do you understand any other of the significance
22 of this page?

23 A. Yes. At the top it says, Payaso's woman.

24 Q. Anything else?

25 A. No.

1 Q. Now -- that's 72. All right.

2 Mr. Ayala, does MS-13 have any particular music
3 that members listen to?

4 A. There's a lot of music that we listen to.

5 Q. Is there music that's particular to MS-13?

6 A. Yes.

7 Q. Have you listened to music that's particular to
8 MS-13?

9 A. Yes.

10 Q. During your trial preparation, were you asked to
11 listen to a song?

12 A. Yes.

13 Q. Were you able to recognize the song that you
14 listened to?

15 A. Yes, I had heard it before.

16 Q. Was it related at all to MS-13?

17 A. Yes.

18 MS. MARTINEZ: Your Honor, at this time the
19 government would ask to publish Government's
20 Exhibit 104-A, which is a recording that we would play.
21 It's in Spanish. It's, I think, less than two minutes;
22 and also, Government's Exhibit 104-B, which is a
23 translation of that recording, which was previously
24 identified and admitted by one of the linguists.

25 THE COURT: So, do you want us to have 104-B

1 handy as you play the song?

2 MS. MARTINEZ: Yes, Your Honor. And I think
3 Ms. Greigo can put them both on the screen, but I
4 believe that 104-B is in the jurors' binder.

5 MR. LEIVA: Your Honor, note an objection
6 based on relevance.

7 THE COURT: Relevance?

8 MR. LEIVA: Yes, sir.

9 THE COURT: Relevance?

10 MS. MARTINEZ: Oh, I'm sorry, Your Honor.
11 The relevance is, as this witness has testified, there
12 are songs that are particular to MS-13 and that relate
13 to MS-13. He's testified that he has listened to such
14 music and, in fact, that he has listened previously to
15 this precise song, and that it relates to MS-13.

16 THE COURT: All right. How does that relate
17 to this case?

18 MR. LEIVA: Your Honor, may we --

19 THE COURT: Have you laid a --

20 MS. MARTINEZ: Perhaps we should approach.

21 THE COURT: -- foundation?

22 MS. MARTINEZ: I --

23 THE COURT: Have you laid a foundation,
24 connection to this case?

25 MS. MARTINEZ: Could we perhaps approach to

1 avoid the speaking objection?

2 THE COURT: All right. Sure.

3 (Thereupon, the following side-bar
4 conference was had:)

5 MR. JENKINS: Your Honor, on behalf of
6 Mr. Torres, we would object on relevance grounds, also.

7 As I think the Court has already inquired of
8 the counsel for the government, I fail to see what the
9 relevance is in this particular case. The mere fact
10 that members of the MS-13 might listen to country music
11 or prefer rock over rap music, I don't see where the
12 relevance is to this case.

13 MR. LEIVA: If I may add, Your Honor --
14 again on behalf of Mr. Lopez Torres -- they're not
15 singing about the exploits. For example, the Mexican
16 mafia is known to have songs made based on the exploits
17 about people they killed, transactions that they've
18 done. This is just a generic MS-13 song. It's akin to,
19 if we have an African-American gang and they want to pay
20 NAAF, the police, there's no relevance to it. That's
21 the kind of music they listen to.

22 It's more prejudicial than anything else.
23 So unless this song was either made by one of these
24 members or specifically highlights or details --

25 MS. MARTINEZ: I'm sorry. The jury is

1 speaking very loudly right now. Perhaps --

2 THE COURT: I can hear. Can you hear?

3 MS. MARTINEZ: I just meant it's not
4 appropriate for the jury to be speaking in the courtroom
5 to each other.

6 THE COURT: They can talk to each other.

7 MR. LEIVA: (Continuing) -- or details, one
8 of the exploits, then I don't see how it's relevant at
9 all.

10 MS. MARTINEZ: Your Honor, relevant in this
11 case is the racketeering enterprise, the existence of
12 the racketeering, the activities that the racketeering
13 enterprise, MS-13, engaged in, and also membership in
14 the racketeering enterprise.

15 Your Honor, I'll proffer that subsequent
16 witnesses -- I can only take so many witnesses at
17 once -- subsequent witnesses were telling from the
18 telephone, one of the defendants from which membership
19 in this enterprise in MS-13 will be contested.

20 It's Manuel Ernesto Paiz Guevara,
21 Mr. Chick's client, that we're obviously not going to
22 elicit that particular fact through the witness, but
23 because this witness has personal knowledge of this
24 song, we do think it's appropriate for him to be able to
25 testify about the song.

1 The government will shore up the relevance,
2 the very specific relevance to this case, in one of the
3 defendant's -- one of the defendant's testimony that the
4 song came from the cellphone of this defendant.

5 The order of witnesses -- we can't put every
6 witness before every other witness.

7 But in addition to the relevance to
8 Mr. Chick's client, we do submit that, generally
9 speaking, these lyrics about what -- and the lyrics are
10 about MS-13, Your Honor, and about what MS-13 is and
11 what MS-13 does, and we submit that that is relevant to
12 this case, and to the various elements we have to prove
13 to prove that MS-13 is a racketeering enterprise.

14 MR. LEIVA: So --

15 MS. MARTINEZ: So, in other words, we have
16 two bases of relevance, Your Honor, generally speaking
17 to the case at large and the racketeering enterprise,
18 and more specifically to the Defendant Paiz Guevara.

19 THE COURT: You were going to say something?

20 MR. LEIVA: Yes, I do, Your Honor. Several
21 things.

22 It's one thing to ask this witness if he's
23 heard the song, and if it's about MS-13, and that's it.
24 I mean, if she wants to establish that Mr. Chick's
25 client had a song about MS-13 in his possession, that's

1 all that needs to be asked of this witness.

2 And as far as the lyrics go, they're very
3 highly prejudicial, Your Honor. But, just -- I --

4 THE COURT: Is it against the law to possess
5 a song?

6 MS. MARTINEZ: No, Your Honor. But if part
7 of the defense is arguing that he was not fully a
8 enmeshed in the culture of MS-13, or not really a member
9 of MS-13, we do see this as extremely relevant to show
10 his membership, to show he had been engaged in the
11 culture, to show him associating with gang members.

12 Again, if this were a different defendant, I
13 think that perhaps the relevance would be more limited,
14 if this were a defendant where we have ample testimony
15 about leadership, where it seems from the arguments of
16 counsel, you can seem to acknowledge that they're part
17 of the gang.

18 But Mr. Chick has strenuously argued about
19 his client not really being involved with the gang, his
20 client being a small player. In the opening statement,
21 various arguments he made to the Court, and I imagine he
22 will argue in closing that his client had very little
23 involvement with the gang.

24 And, this type of evidence does demonstrate
25 his membership, his association, things that we must

1 prove in order to make our case against that defendant.

2 MR. LEIVA: All it does is show his
3 preference for music. That's all it shows. Just
4 because I happen to listen to some music, a particular
5 type of genre, doesn't mean I'm a member of whatever
6 that music is detailing or singing about.

7 MS. MARTINEZ: Although it --

8 THE COURT: I don't want to make a federal
9 case out of this.

10 MR. ZIMMERMAN: We already have that.

11 THE COURT: I've heard enough. If all
12 you've got is a record on a cellphone, then you have a
13 very weak case.

14 I sustain the objection. I don't think we
15 need to have some fact -- to have the songs on the
16 cellphone means nothing. It doesn't prove that the
17 person is a member of the gang. They like to listen to
18 that song, just like the NWA song, so what. Objection
19 sustained.

20 (Thereupon, the side-bar conference was
21 concluded.)

22 MS. MARTINEZ: Thank you, Your Honor.

23 THE COURT: Now you may proceed, Counsel.

24 BY MS. MARTINEZ:

25 Q. Mr. Ayala, you mentioned earlier in your

1 testimony someone named Peligroso.

2 A. Yes.

3 Q. Who is Peligroso?

4 A. A gang member, a member of the clique.

5 Q. What happened with Peligroso?

6 A. I only knew him for a couple of months and then
7 he disappeared.

8 Q. What do you mean by "disappeared"?

9 A. Well, I only -- when -- before -- when I became
10 part of the clique -- before I became part of the
11 clique, he had already disappeared. And when I became
12 part of the clique, I found out that he had tried to --

13 THE COURT: Excuse me. Excuse me.

14 Is he getting ready to tell us some hearsay
15 about what he found out, without any foundation?

16 MS. MARTINEZ: I'm not sure, Your Honor. I
17 asked what he meant by "disappeared." That's the
18 question.

19 THE COURT: Okay. Well, he can testify that
20 he couldn't find him again. Next question.

21 BY MS. MARTINEZ:

22 Q. When you say -- without saying what anyone else
23 told you, before laying that foundation, when you use
24 the word "disappeared," what do you mean by that?

25 A. He didn't come over to meet with the homeboys any

1 more.

2 Q. Within MS-13, what's the significance of a
3 homeboy disappearing or not coming to meet with the
4 homeboys?

5 A. It means that he is *pesetiando* (phonetics), or
6 like a *peseta*.

7 Q. What's a *peseta*?

8 A. That he is distancing himself from the clique
9 without telling anyone that he doesn't want to be with
10 the clique any more.

11 Q. Is that something that is permitted within MS-13?

12 A. No.

13 Q. Why not?

14 A. Because once you're inside, you can't get out.

15 Q. What can happen to a homeboy who tries to get
16 out?

17 A. He can be killed if he does it without saying
18 anything.

19 Q. How did the clique react to Peligroso
20 disappearing?

21 A. Putting a green light on him.

22 Q. What's a green light?

23 A. He was going to be killed.

24 Q. Were there times when you heard other homeboys
25 discuss the green light on Peligroso?

1 A. I heard about going out to look for him and kill
2 him.

3 Q. Were you aware of a plan to go out and kill him?

4 A. Yes.

5 Q. What was the plan?

6 A. Go looking for him where he met at a school, and
7 hit him.

8 Q. What do you mean by "hit"?

9 A. Kill him.

10 Q. Who was supposed to go?

11 A. Lil Demente, Lagrima, Greñas, a homeboy we call
12 Drowsy, and a *paro* we call Marciano.

13 Q. How were they going to kill him?

14 A. With a machete and also a shotgun.

15 Q. Was there a particular day when the plan was
16 supposed to be carried out?

17 A. Yes, there was a day, but I can't remember that
18 day.

19 Q. Were you around that day?

20 A. Yes.

21 Q. What did you see happen?

22 A. I saw when they were getting together to leave in
23 Lil Demente's car.

24 Q. Who was getting together to leave?

25 A. There was Lil Demente. There was Greñas. There

1 was Drowsy. Marciano was also there. And the other
2 homeboys, we were there, also, waiting for them to
3 leave, and also waiting for Lagrima, because he was
4 supposed to go with them.

5 Q. Were you there when they left?

6 A. Yes, I was there.

7 Q. Who was in the car when it left?

8 A. Lil Demente, Greñas, Drowsy, and Marciano.

9 Q. Was Lagrima there?

10 A. No.

11 Q. Who was Lagrima?

12 A. He was a gang member, the one we killed.

13 MS. MARTINEZ: Your Honor, may I show the
14 witness what has been marked as Government's Exhibit
15 61-A and B?

16 THE COURT: Yes.

17 BY MS. MARTINEZ:

18 Q. Do you recognize the person in those pictures?

19 A. Yes.

20 Q. Who is it?

21 A. Lagrima.

22 MS. MARTINEZ: Your Honor, the government
23 moves into evidence Government's Exhibit 61-A and 61-B.

24 THE COURT: Received.

25 MS. MARTINEZ: May we publish?

1 THE COURT: Yes.

2 BY MS. MARTINEZ:

3 Q. Before the car left with Lil Demente, Greñas,
4 Drowsy and Marciano, at any point, did you see any
5 weapon?

6 A. Yes.

7 Q. What weapon?

8 A. A machete and a shotgun.

9 Q. Without telling me what you may have heard, at
10 any point did you hear what ended up happening that
11 night?

12 A. Yes.

13 Q. Who did you hear from?

14 A. Who did I hear --

15 Q. Who told you?

16 A. Greñas.

17 Q. What did Greñas tell you?

18 A. He didn't only tell me, he told all the other
19 homeboys, too.

20 Q. What did you hear Greñas tell the homeboys?

21 A. That when they got to the place, the police was
22 waiting for them, that someone had turned them in.

23 Q. What did Greñas say about someone turning them
24 in?

25 A. That he -- he said Lagrima, that he had heard his

1 voice when he had been taken to a room, when he was
2 taken to the jail in Prince William.

3 Q. What, if anything, did he say that that meant to
4 him?

5 A. That he had turned them in.

6 Q. How did the clique react to Greñas's accusations
7 about Lagrima?

8 A. Well, that we were all going to find out if it
9 was the truth, that he had turned us in -- turned them
10 in, because he was supposed to go along with them, but
11 he didn't.

12 Q. What do you mean by, find out if he was the one
13 who turned everyone in?

14 A. We were going to find out if he was a snitch, and
15 we were going to prove it or something like that.

16 Q. Prove it how?

17 A. Taking him to another mission, and seeing if
18 something strange happened like it happened on that day.

19 Q. What is a mission?

20 A. It could be a hit.

21 Q. Was there a time when Lagrima was taken to
22 another mission to see if something strange happened?

23 A. Yes.

24 Q. What was that mission?

25 THE INTERPRETER: Interpreter needs --

1 THE WITNESS: I was going to do a mission
2 with Greñas, to do a hit or something like that, and he
3 was supposed to be waiting for Greñas at a certain spot.

4 BY MS. MARTINEZ:

5 Q. Who was supposed to be waiting?

6 A. Lagrima.

7 Q. What happened?

8 A. Because Greñas said that he arrived there, but he
9 wasn't there, that there was a patrol car.

10 Q. What did Greñas do after that?

11 A. He spoke with us, and he told -- said that he was
12 already sure that he was a snitch.

13 Q. What happened with Lagrima -- what happened with
14 respect to Lagrima after Greñas said he was sure Lagrima
15 was a snitch?

16 A. Look for him and put a green light on him.

17 Q. Who put a green light on him?

18 A. Well, the clique decided.

19 Q. Do you know who within the clique was in charge
20 of deciding, or do you mean the whole clique decided?

21 A. Greñas made the call to get the okay. He called
22 El Salvador, the homeboy down there. He also spoke with
23 Payaso.

24 Q. Starting with El Salvador, what homeboy in El
25 Salvador did Greñas call about the green light?

1 A. Well, he spoke with Poison, because he was a
2 homeboy who was down there. But, he also spoke to other
3 cliques who said that Lagrima was a snitch.

4 Q. You know why he spoke with Poison in El Salvador?

5 A. Because he has the word in El Salvador.

6 Q. What do you mean by "the word"?

7 A. Because he has a high rank and he can also make a
8 decision for the clique.

9 Q. You said that Greñas also spoke with Payaso; is
10 that right?

11 A. Yes.

12 Q. That's the Payaso in prison in the U.S.?

13 A. Yes.

14 Q. Do you know why Greñas spoke with Payaso?

15 A. Yes. Because he was the clique's *ranflero*, he
16 was supposed to know.

17 Q. After the green light was put on Lagrima, was
18 there a plan developed about how to carry out the green
19 light?

20 A. Yes.

21 Q. Were you present for conversations with other
22 gang members about the plan on how to kill Lagrima?

23 A. Yes.

24 Q. During conversations about the plan to kill
25 Lagrima, was the person we agreed to call homeboy two

1 there?

2 A. Yes.

3 Q. Other than homeboy two, what other gang members
4 were present when you were involved in conversations
5 about how to kill Lagrima?

6 A. Myself. There was Greñas, Lil Poison, Pesadilla.
7 There was Lil Evil. Duende was there, Lil Payaso, Lil
8 Slow -- he was Spider at that time.

9 Q. Where did these conversations take place?

10 A. Several places.

11 Q. Where?

12 A. Near the apartments where we lived, where we
13 sometimes met, sometimes over the phone when we spoke
14 with Payaso.

15 Q. Let's start first with the apartments where you
16 lived. What neighborhood were those apartments in?

17 A. That's in Culmore.

18 Q. You mentioned phone conversations. Who did you
19 say you spoke to on the phone?

20 A. With several homeboys, always our clique.

21 Q. I believe I heard you say the name Payaso; is
22 that right?

23 A. Yes.

24 Q. Were there conversations with Payaso about the
25 murder?

1 A. Yes.

2 Q. Based on the plan, where was the murder supposed
3 to take place?

4 A. Where we met to have our meetings.

5 Q. Where did you meet?

6 THE COURT: Excuse me. Excuse me.

7 THE WITNESS: Behind the Barcroft View
8 Apartments, in the forest.

9 THE COURT: We'll start right there on
10 Monday.

11 Ladies and gentlemen, please do not discuss
12 the case. Don't do any research on the case. Leave
13 your notes in the jury deliberation room. We'll resume
14 Monday, 10:00 o'clock. You're free to go. Thank you.

15 The witness can step down. Thank you.

16 (Jury excused.)

17 THE COURT: We're in recess.

18 (Proceedings concluded at 5:01 p.m.)

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2 CERTIFICATE OF REPORTER
3

4 I, Renecia Wilson, an official court
5 reporter for the United States District Court of
6 Virginia, Alexandria Division, do hereby certify that I
7 reported by machine shorthand, in my official capacity,
8 the proceedings had upon the jury trial in the case of
9 UNITED STATES OF AMERICA v. JOSE TORRES LOPEZ, et al.

10 I further certify that I was authorized and
11 did report by stenotype the proceedings in said jury
12 trial, and that the foregoing pages, numbered 1 to 195,
13 inclusive, constitute the official transcript of said
14 proceedings as taken from my shorthand notes.

15
16 IN WITNESS WHEREOF, I have hereto
17 subscribed my name this 18th day of May, 2016.

18
19 /s/

20 Renecia Wilson, RMR, CRR
21 Official Court Reporter
22
23
24
25